

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD JEROME THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39314

FILED

OCT 24 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On April 8, 1999, the district court convicted appellant, pursuant to an Alford¹ plea, of robbery of a victim sixty-five years of age or older and conspiracy to commit robbery. The district court sentenced appellant to serve a term of thirty to one hundred twenty months in the Nevada State Prison for the robbery, plus an equal and consecutive term for the victim over sixty-five enhancement, and a concurrent term of twelve to forty-eight months for the conspiracy. The district court ordered that the sentences be served consecutively to a sentence appellant received in district court case number C142211. Appellant did not file a direct appeal.

On January 17, 2002, appellant filed a motion to correct an illegal sentence in the district court. The State opposed the motion. On

¹North Carolina v. Alford, 400 U.S. 25 (1970).

February 4, 2002, the district court denied appellant's motion. This appeal followed.

A motion to correct an illegal sentence is limited in scope and may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence, or the sentence was imposed in excess of the statutory maximum.² "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"³

In his motion, appellant claimed that his sentence was illegal because the district court did not have jurisdiction to order that the sentence in the instant case be served consecutively to the sentence appellant received in district court case number C142211. Appellant was on probation in district court case number C142211 when he committed the instant offense, therefore the district court had the authority to impose a consecutive sentence.⁴ Appellant also argued that because he was on probation, the underlying sentence for that offense was "non-existing," and therefore the district court could not impose a consecutive sentence to a "non-existing" sentence. This claim is without merit. Probation is the

²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

³Id., (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴See NRS 176.035(2).

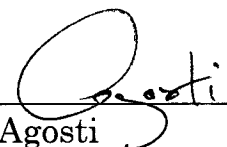
suspension of the execution of a sentence.⁵ Probation does not, as appellant argued, render the underlying sentence non-existent. Accordingly, appellant's sentence is facially legal, and the district court did not err in denying his motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Gerald Jerome Thompson
Clark County Clerk

⁵See generally Van Dorn v. Warden, 93 Nev. 524, 525, 569 P.2d 938, 939 (1977).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).