

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD FOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39325

FILED

MAY 23 2002

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

ORDER OF AFFIRMANCE

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

On March 17, 1998, the district court convicted appellant of two counts of unlawful possession of a controlled substance not for purpose of sale in district court case number 22-5-97.¹ The district court sentenced appellant to serve two consecutive terms of a minimum of twelve months to a maximum of forty-eight months in the Nevada State Prison. The district court imposed the prison terms to run consecutively to any prison term imposed in district court case number 6958. The district court suspended the sentences and placed appellant on probation for a period of time not to exceed five years. The district court imposed the probationary term in case 22-5-97 to run concurrently with the probationary term in

¹Appellant entered a guilty plea to one count and a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) for the second count.

case 6958. On April 24, 2000, the district court revoked appellant's probation and executed the original judgment of conviction.

On August 24, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a response. On December 10, 2001, and February 26, 2002, the district court entered written orders denying appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence in case 22-5-97 was illegally imposed to run consecutively to the sentence in case 6958 because the sentence in case 22-5-97 was executed prior to the sentence in case 6958 being executed.² Appellant complained that the district court did not recognize its authority to modify his terms in case 22-5-97 when it revoked appellant's probation.³ Appellant also complained that the State had breached the plea agreement.

²In other words, although appellant was sentenced first in case 6958, appellant's probation in case 6958 was revoked after his probation was revoked and the sentence executed in case 22-5-97. Appellant believed that this later revocation and execution of his sentence in case 6958 caused the sentence in case 22-5-97 to be the first sentence imposed. This, appellant believed, caused the district court in case 22-5-97 to lack the authority to determine whether the prison terms between the district court cases would run concurrently or consecutively.

³NRS 176A.630(5) (providing that the district court may "[m]odify the original sentence imposed by reducing the term of imprisonment and cause the modified sentence to be executed.").

A motion to correct an illegal sentence 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.⁴ "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.'"⁵ A motion to correct an illegal sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁶

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2. In Edwards this court specifically stated:

We have observed that defendants are increasingly filing in district court documents entitled "motion to correct illegal sentence" or "motion to modify sentence" to challenge the validity of their convictions and sentences in violation of the exclusive remedy provision detailed in NRS 34.724(2)(b), in an attempt to circumvent the procedural bars governing post-conviction petitions for habeas relief under NRS chapter 34. We have also observed that the district courts are often addressing the merits of issues regarding the validity of convictions or sentences when such issues are presented in motions to modify or correct allegedly illegal

continued on next page . . .

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was without jurisdiction.⁷ Appellant's argument that he should not have to serve his sentences in case 22-5-97 consecutively to his sentence in case 6958 because his probation was revoked in case 22-5-97 prior to probation revocation in case 6958 was without merit. The district court in sentencing appellant in case 22-5-97 properly elected to exercise its discretion to impose the prison terms in case 22-5-97 to be served consecutively to the term in case 6958.⁸ The timing of the probation revocations in the two cases did not alter the original imposition of consecutive sentences as pronounced in case 22-5-97. Finally, to the extent that appellant argued that the district court erroneously refused

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sentences without regard for the procedural bars the legislatures has established. If a motion to correct and illegal sentence or to modify a sentence raises issues outside of the very narrow scope of the inherent authority recognized in this Opinion, the motion should be summarily denied.

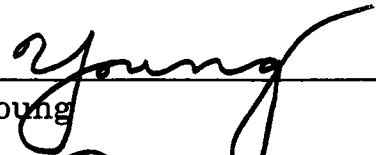
⁷NRS 453.336; NRS 193.130.

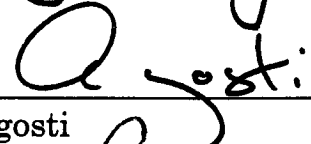
⁸NRS 176.035(1) ("Except as otherwise provided in subsection 2, whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed.").


his request for modification at his probation revocation hearing and that the State had breached the plea agreement, we conclude that these claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General/Carson City
Lincoln County District Attorney
Richard Fox
Lincoln County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).