

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39330

FILED

JUL 05 2002

ORDER OF AFFIRMANCE

ANETTE W. BLOOM
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Pedro Rodriguez' motion to correct an illegal sentence.

On August 30, 1999, Rodriguez was convicted, pursuant to a guilty plea, of one count of possession of a controlled substance, a category E felony. The district court sentenced Rodriguez to serve a prison term of 12-48 months, and then suspended the sentence and placed Rodriguez on probation for an indeterminate period not to exceed 3 years; one of the conditions of probation was that Rodriguez successfully complete the Drug Court treatment program. On June 14, 2001, after conducting a hearing and determining that Rodriguez violated the conditions of his probation, the district court filed an order revoking his probation and imposing the original sentence with 67 days credit for time served.

On December 14, 2001, Rodriguez filed a motion to correct an illegal sentence in the district court. The State opposed the motion, and on February 7, 2002, the district court denied the motion. This timely appeal followed.

Rodriguez contends that his sentence must be corrected, and that he should be permitted to withdraw his guilty plea. More specifically, Rodriguez argues that the negotiated plea agreement allowed for him to

withdraw his guilty plea to the felony possession charge after his successful completion of the Drug Court treatment program, and that he would then be allowed to enter a guilty plea to the lesser gross misdemeanor charge of possession of a dangerous drug without a prescription.

A motion to correct an illegal sentence, however, 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.¹ "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.'"² A motion to correct an illegal sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.³

Based upon our review of the record on appeal, we conclude that the district court did not err in denying Rodriguez' motion. Rodriguez' sentence was facially legal, and there is no indication that the district court was without jurisdiction.⁴ Finally, we also conclude that the arguments raised by Rodriguez in his motion fall outside the scope of issues permissible in a motion to correct an illegal sentence.

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

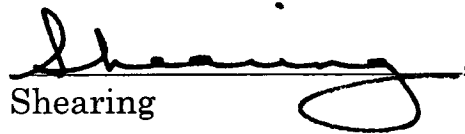
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

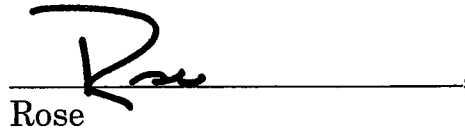
³Id. at 708-09 n.2, 918 P.2d at 325 n.2.

⁴See NRS 453.336(2)(a); NRS 193.130(2)(e).

Therefore, having considered Rodriguez' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk