

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO GATON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39535

FILED

DEC 19 2002

ORDER OF AFFIRMANCE

JANET M. BLOCH  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

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

On August 25, 1989, the district court convicted Gaton, pursuant to a jury verdict, of four counts of level-two trafficking in a controlled substance and two counts of level-three trafficking in a controlled substance. The district court sentenced Gaton to serve four concurrent 20-year prison terms for the level-two trafficking counts and two concurrent prison terms of life with the possibility of parole. Gaton appealed, and this court affirmed his conviction.<sup>1</sup> Thereafter, Gaton sought habeas relief twice in the district court; the district court orders denying Gaton's post-conviction petitions were affirmed by this court.<sup>2</sup>

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<sup>1</sup>Gaton v. State, Docket No. 20555 (Order Dismissing Appeal, March 6, 1991).

<sup>2</sup>Gaton v. State, Docket No. 24135 (Order Dismissing Appeal, December 2, 1994); Gaton v. State, Docket No. 26190 (Order Dismissing Appeal, January 2, 1998).

On March 21, 2002, Gatton filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 5, 2002, the district court denied Gatton's motion. This appeal followed.

In the motion, Gatton contended that his sentences were illegal because the district court failed to impose parole eligibility in five years, as required by NRS 453.3395. Gatton reasoned that the section governing his trafficking offenses, NRS 453.3395, was amended in 1995 to provide that a defendant convicted pursuant to that section be eligible for parole after serving five years in prison.<sup>3</sup> Gatton therefore argued that he should be eligible for parole pursuant to the new minimum term. We disagree.

Our review of the record on appeal reveals that the district court did not err in denying Gatton's motion to correct an illegal sentence. In amending the provisions of NRS 453.3395, the legislature expressly provided that the amendments do not apply to "offenses which are committed before July 1, 1995."<sup>4</sup> These provisions clearly evince the legislature's intent that the amendments to NRS 453.3395 are to be applied prospectively only based on the date the offense was committed.<sup>5</sup> Here, Gatton's offense was committed prior to July 1, 1995; therefore, the

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<sup>3</sup>See 1995 Nev. Stat., ch. 443, § 298(3)(b), at 1289.


<sup>4</sup>1995 Nev. Stat., ch. 443, §§ 393-94, at 1340.

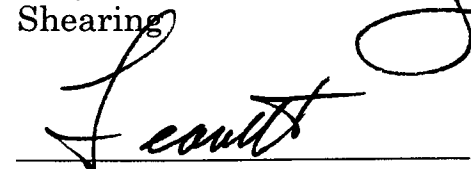
<sup>5</sup>Cf. Shepley v. Warden, 90 Nev. 93, 94, 518 P.2d 619, 620 (1974) (rejecting post-conviction habeas petitioner's contention that he was entitled to benefit of ameliorative amendment to sentencing statute which took effect after petitioner's conviction because former sentencing provisions remained in force at time petitioner was sentenced and there was no indication that legislature intended amendment to apply retroactively).

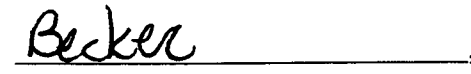
1995 amendments do not apply. Moreover, we note that the sentences imposed by the district court were within the statutory guidelines as they existed at the time of Gaton's offenses.<sup>6</sup> Accordingly, the district court did not err in denying Gaton's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gaton is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Michael L. Douglas, District Judge  
Fernando Gaton  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>6</sup>See 1983 Nev. Stat., ch. 111, § 2(2), at 287; 1985 Nev. Stat., ch. 78, § 2(1), at 159 (providing for a prison term of not less than 10 years for a level-two trafficking offense, and a prison term of life with parole eligibility in 25 years or a definite prison term of 25 years for a level-three trafficking offense).

<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).