

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUIS A. LEONARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

LOUIS A. LEONARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39538

FILED

MAR 03 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT

No. 39539

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated proper person appeals from a district court order denying appellant Louis A. Leonard's document labeled "request for nunc pro tunc order."¹

On August 23, 1995, Leonard was convicted in district court case no. CR951293, pursuant to a guilty plea, of level-two trafficking in a

¹Because Leonard challenged the validity of his sentence, the district court construed Leonard's request for a nunc pro tunc order amending the judgments of conviction as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them"). We conclude the district court erred in treating Leonard's request as a habeas petition because it was not verified. See NRS 34.730; NRS 34.735. We further conclude, however, that the district court order denying Leonard's request is appealable because it is a final judgment. See NRS 177.015(3).

controlled substance. The district court sentenced Leonard to serve a prison term of 15 years. On the same day, in district court case no. CR951294, Leonard was convicted, pursuant to a guilty plea, of level-two trafficking in a controlled substance. The district court sentenced Leonard to serve a prison term of 15 years to run consecutively to the sentence imposed in district court case no. CR951293. Leonard did not file a direct appeal in either case.

On March 11, 1996, Leonard filed a proper person post-conviction petition for a writ of habeas corpus in district court case no. CR951294. On September 5, 1996, Leonard filed a proper person post-conviction petition in district court case no. CR951293. The district court appointed counsel to represent Leonard with respect to both petitions, and counsel supplemented the petitions. The State opposed the petitions. After conducting an evidentiary hearing, the district court denied the petitions. Leonard did not appeal.

On March 6, 1998, Leonard filed a proper person motion to amend or correct an illegal sentence in district court case nos. CR951293 and CR951294. In the motion, Leonard sought a reduction in his sentences based on the 1995 amendment to NRS 453.3385. The State opposed the motion, and Leonard filed a reply to the State's opposition. On May 4, 1998, the district court denied the motion, finding that the 1995 amendments did not apply to Leonard. Leonard did not appeal.

On June 6, 2000, Leonard sent the district court a letter, which the district court construed as a request to amend the judgments of conviction in district court case nos. CR951293 and CR951294. In the letter, Leonard claimed that his parole eligibility dates did not comply

with the applicable sentencing statute. On June 26, 2000, the district court denied the request. Leonard did not appeal.

On February 25, 2002, Leonard filed a document called a “request for nunc pro tunc order” in the district court. The district court treated the document as a habeas petition and, on April 4, 2002, denied the petition. This appeal followed.

In the document, Leonard requested that the district court amend the judgments of conviction “to reflect with sufficient particularity the minimum parole eligibility in effect under NRS 453.3385 at the time of Defendant’s convictions.” The district court denied the request. We conclude that the district court did not err in denying Leonard’s request.

Generally, a defendant must serve the penalty set forth by the statute in effect at the time he committed the offense.² Prior to the 1995 amendment, NRS 453.3385(2), the level-two trafficking statute under which Leonard was convicted, provided for a sentence of a prison term of life or a definite prison term of not less than 10 years.³ We recognize that NRS 453.3385(2) was amended in 1995 to reduce the penalty to a minimum of 2 years and a maximum term of 15 years.⁴ The 1995 amendment, however, does not apply to offenses committed before July 1, 1995, regardless of when the sentencing proceeding for the offense

²See Tellis v. State, 84 Nev. 587, 445 P.2d 938 (1968).

³See 1983 Nev. Stat., ch. 111, § 2(2), at 287.

⁴See 1995 Nev. Stat., ch. 443, § 296(2), at 1288.

occurred.⁵ Here, Leonard committed the offenses in question prior to July 1, 1995. Therefore, the 1995 amendment does not apply to his sentences.

To the extent that Leonard contended that he is entitled to have his good time credits applied to reduce his parole eligibility date, we also conclude that Leonard's contention lacked merit. NRS 209.446(b)(b) provides that good time credits earned "[a]pply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence which must be served before a person becomes eligible for parole." (Emphasis added.) Here, NRS 453.3385(2), as it existed prior to the 1995 amendment, required "imprisonment in the state prison for life or for a definite term of not less than 10 years," and provided that "the person is not eligible for parole until he has actually served the mandatory minimum term of imprisonment prescribed by the section under which he was convicted."⁶ Because NRS 453.3385(2), as it existed prior to the 1995 amendment, required that Leonard serve a mandatory minimum term of 10 years, good time credits may not be applied to reduce the prison time Leonard must serve before becoming eligible for parole.⁷ Accordingly, we conclude that the district court did not err in denying Leonard's request.


⁵See 1995 Nev. Stat., ch. 443, §§ 393-394, at 1340.


⁶1983 Nev. Stat., ch. 111, § 2(2), at 287; 1985 Nev. Stat., ch. 78, § 2(1), at 159.

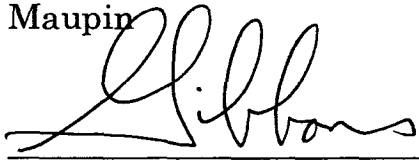
⁷We note that, although the good time credits do not apply to Leonard's parole eligibility date, they do apply to reduce the maximum term imposed on Leonard's sentences. See NRS 209.446(6)(a) (Good time credits "[m]ust be deducted from the maximum term imposed by the sentence").

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Leonard is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Louis A. Leonard
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).