

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERALD C. CUNNINGHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40139

FILED

JUN 04 2003

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 26, 1983, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault, one count of attempted sexual assault and one count of lewdness with a minor child under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for sexual assault and two concurrent terms of twenty years and ten years for attempted sexual assault and lewdness with a minor, respectively. This court affirmed appellant's judgment of conviction.¹ The remittitur issued on November 2, 1984.

Appellant filed numerous post-conviction documents and appeals attacking the validity of his judgment of conviction.² Most

¹Cunningham v. State, 100 Nev. 396, 683 P.2d 500 (1984).

²Cunningham v. State, Docket No. 32234, 32601, 36001, 36129 (Order of Affirmance, October 12, 2000); Cunningham v. State, Docket No. 22376 (Order Dismissing Appeal, October 24, 1991); Cunningham v. State, Docket No. 22154 (Order Dismissing Appeal, June 27, 1991); Cunningham v. State, Docket No. 19383 (Order Dismissing Appeal,

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recently, on July 26, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court.³ On August 13, 2002, the district court denied appellant's motion. This appeal followed.

Appellant's motion is largely unintelligible. It appears that appellant may have attempted to challenge the validity of the trial proceedings.

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

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal and there is no

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November 9, 1988); Cunningham v. State, Docket No. 17199 (Order Dismissing Appeal, March 31, 1987); Cunningham v. State, Docket No. 16629 (Order Dismissing Appeal, March 4, 1985).

³Appellant's document was labeled, "motion to correct no record unusual illegal sentence."

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)).

indication in the record on appeal that the district court was without jurisdiction in this matter.⁶ Thus, we affirm the order of the district court.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Michael R. Griffin, District Judge
Jerald C. Cunningham
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

⁶See 1977 Nev. Stat., ch. 598, § 3, at 1627 (sexual assault); 1979 Nev. Stat., ch. 655, § 47, at 1430 (lewdness with a minor); 1981 Nev. Stat., ch. 64, § 1, at 158 (punishment for an attempt).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.