

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN C. BOWLING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40318

STEVEN C. BOWLING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40319

FILED

JAN 16 2003

ORDER OF AFFIRMANCE

JANET A. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
DEPUTY CLERK

These are appeals from orders of the district court denying appellant Steven C. Bowling's motions to correct an illegal sentence. We elect to consolidate the appeals for disposition.<sup>1</sup>

Docket No. 40318

On March 17, 1995, Bowling was initially charged by way of a criminal complaint with one count each of high-level trafficking in a controlled substance and possession of a controlled substance with the intent to sell; the offenses were alleged to have occurred on December 31, 1994. Subsequent to negotiations, on August 20, 1996, in district court case no. C136945, Bowling was convicted, pursuant to a guilty plea, of one count of low-level trafficking in a controlled substance. The district court sentenced Bowling to serve a prison term of 3-12 years and ordered him to pay a fine of \$50,000.00. On July 25, 2002, with the assistance of counsel,

<sup>1</sup>See NRAP 3(b).

Bowling filed a motion to correct an illegal sentence in the district court. The State opposed the motion. On August 28, 2002, the district court conducted a hearing and denied Bowling's motion.

Docket No. 40319

On August 23, 1995, Bowling was initially charged by way of a criminal complaint with one count each of high-level trafficking in a controlled substance and mid-level trafficking in a controlled substance; the offenses were alleged to have occurred on June 13, 1995. Subsequent to negotiations, on September 3, 1996, in district court case no. C132139, Bowling was convicted, pursuant to a guilty plea, of one count of low-level trafficking in a controlled substance. The district court sentenced Bowling to serve a concurrent prison term of 3-12 years and ordered him to pay a fine of \$50,000.00 and \$3,733.86 in extradition fees. On July 25, 2002, with the assistance of counsel, Bowling filed a motion to correct an illegal sentence in the district court. The State opposed the motion. On September 10, 2002, the district court heard arguments from counsel and denied Bowling's motion. Bowling timely appeals from both orders denying his motions to correct an illegal sentence.

Citing to Sparkman v. State<sup>2</sup> and Carter v. State<sup>3</sup> for support, Bowling contends that, pursuant to NRS 453.341(1), he should have been sentenced in both of his cases according to the penalty provisions in effect

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<sup>2</sup>95 Nev. 76, 590 P.2d 151 (1979).

<sup>3</sup>95 Nev. 259, 592 P.2d 955 (1979).

at the time of his sentencing rather than the provisions in effect at the time he committed his offenses.<sup>4</sup> We disagree.

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.<sup>5</sup> “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.’”<sup>6</sup>

We conclude that the district court did not err in denying Bowling’s motions. Bowling’s sentences were facially legal, and there is no indication that the district court in either case was without jurisdiction. Former NRS 453.3385(1) required the district court to sentence Bowling to a prison term of not less than three years and not more than twenty years, and fine him not less than \$50,000.00. When the legislature amended that section and reduced the statutory penalties in 1995, it clearly stated that the amendments do not apply to offenses committed before July 1, 1995.<sup>7</sup> Therefore, Bowling’s sentences are not illegal.

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<sup>4</sup>Compare NRS 453.3385(1) with 1983 Nev. Stat., ch. 111, § 2(1), at 287; see also 1995 Nev. Stat., ch. 443, § 296(1), at 1288.

<sup>5</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

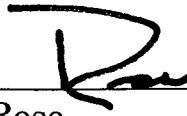
<sup>6</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

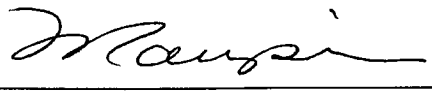
<sup>7</sup>1995 Nev. Stat., ch. 443, § 393, at 1340 (“The amendatory provisions of sections 1 to 230, inclusive, and 232 to 374, inclusive, of this act do not apply to offenses which are committed before July 1, 1995.”).

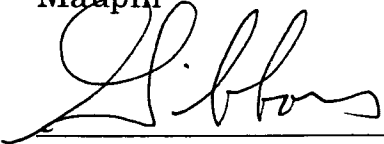
In addition, Bowling's reliance on Sparkman and NRS 453.341 is misplaced. Unlike the amendments at issue in Sparkman, the legislature expressly stated that the amendments to NRS 453.3385 do not apply to offenses committed before July 1, 1995.<sup>8</sup> Accordingly, we conclude that the specific statements of legislative intent control over the more general language of NRS 453.341 that provided the basis for our decision in Sparkman.

Having considered Bowling's contentions and concluded that they are without merit, we

ORDER the judgments of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Sally L. Loehrer, District Judge  
Hon. Michael L. Douglas, District Judge  
James A. Wagner  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>8</sup>Compare 1977 Nev. Stat., ch. 567, §§ 1-17, at 1407-17 with 1995 Nev. Stat., ch. 443, §§ 393-94, at 1340.