

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RALPH BASHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40585

FILED

JAN 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
CHIEF DEPUTY CLERK

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

On August 2, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault (count 1), one count of battery with the intent to commit sexual assault (count 2), and one count of dissuading a victim from reporting a crime (count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) for count 1, a term of life with the possibility of parole; (2) for count 2, a term of twenty-six to one hundred and twenty months to be served concurrently with count 1; and (3) for count 3, a term of nineteen to forty-eight months, to be served consecutively to count 2. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on December 15, 1998.

¹Basham v. State, Docket No. 29317 (Order Dismissing Appeal, November 24, 1998).

On April 10, 2002, appellant filed a proper person motion to vacate an illegal sentence in the district court.² The State opposed the motion. Appellant filed several supplements. On October 29, 2002, the district court denied appellant's motion. This appeal followed.

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.³ "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.'"⁴

In his motion, appellant first claimed that the district court was without jurisdiction to try or sentence him because he was incompetent at the time of trial and sentencing. We conclude that the district court did not err in determining that this claim lacked merit. The documents submitted with appellant's petition do not indicate that the district court had any cause to question appellant's competency.⁵ Thus, the district court did not lack jurisdiction in this matter.

²To the extent that appellant's motion may be construed to be a post-conviction petition for a writ of habeas corpus, the motion was untimely filed, and appellant failed to provide any explanation for the delay. See NRS 34.726(1).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

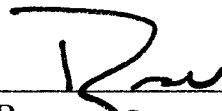
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁵See NRS 178.400; NRS 178.405; NRS 178.415.

Second, appellant claimed that his sentence was illegal because the district court failed to comply with NRS 176.156 at sentencing. We conclude that the district court did not err in determining that this claim lacked merit. NRS 176.156 requires the Division of Parole and Probation to disclose the factual contents of a presentence report to the prosecuting attorney, counsel for the defendant and the defendant. The record on appeal reveals that both appellant and his counsel were provided a copy of the presentence report prior to sentencing. Appellant's sentence is facially legal.⁶ Therefore, we affirm the order of the district court denying appellant's motion.

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.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

⁶NRS 200.366; NRS 200.400; NRS 199.305.

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

cc: Hon. Brent T. Adams, District Judge
John Ralph Basham
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk