

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLAIN POMPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40632

FILED

OCT 21 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 May 28, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years, payment of restitution in the amount of \$1,246.89, payment of a \$25.00 administrative fee, and payment of \$500.00 in attorney's fees. Appellant did not file a direct appeal.

On November 4, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. On November 18, 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.¹ In his motion, appellant contended that the portion of his sentence that required him to pay attorney's fees was without statutory authority.

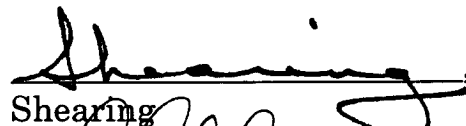
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. NRS 178.3975 specifically authorizes the court to order a defendant to pay all or part of the expenses incurred by the city, county, or state in providing an attorney for the defendant. The court may not require a defendant to pay attorney's fees unless the defendant is or will be able to do so.² There is no indication in the record that appellant was unable or will be unable to pay fees. Therefore, 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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Becker J.


Shearing J.


Gibbons J.

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

²See NRS 178.3975(2).

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).