

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40941

FILED

JAN 28 2004

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 Kevin Brooks' motion to vacate or correct an illegal sentence.

On October 5, 1990, the district court convicted Brooks, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated Brooks a habitual criminal pursuant to NRS 207.010, and sentenced him to serve two concurrent terms of life in the Nevada State Prison without the possibility of parole. This court dismissed Brooks' direct appeal.¹

On February 7, 1991, Brooks filed a petition for post-conviction relief pursuant to former NRS 177.315. On March 13, 1991, the district court denied Brooks' petition because his direct appeal was pending with this court. This court remanded Brooks' subsequent appeal for consideration of his petition.² The district court ultimately denied Brooks' petition. No appeal was taken.

¹Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991). The remittitur issued on January 8, 1992.

²Brooks v. State, Docket No. 22285 (Order of Remand, September 30, 1991).

On April 9, 1999, Brooks filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On July 19, 1999, the district court denied Brooks' petition as procedurally barred. This court affirmed the order of the district court on appeal.³

On January 15, 2003, Brooks filed a proper person motion in the district court to vacate or correct an illegal sentence. The State opposed the motion. On February 3, 2003, the district court denied Brooks' motion. This appeal followed.

NRS 176.555 provides that a district court may correct an illegal sentence at any time. A motion to correct an illegal sentence, however, 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

In his motion, Brooks claimed that the district court lacked jurisdiction to impose a sentence because the justice court lacked jurisdiction to conduct a preliminary hearing. Specifically, Brooks contended that visiting Justice of the Peace Marley Robinson was not qualified as required by statute, because she was not a licensed attorney and had not attended a required course of instruction.

³Brooks v. State, Docket No. 34575 (Order of Affirmance, February 22, 2001).

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)).

Brooks' claims are without merit. NRS 4.340(1) provides that "[w]henever any justice of the peace, in consequence of ill health, absence from his township, or other cause, is prevented from attending to his official duties, he shall, if necessary, invite any other qualified justice of the peace of the same or another county . . . to attend to his official duties."⁶ "The Nevada Constitution provides that the legislature shall determine the qualifications of justices of the peace."⁷ The legislature has set forth the qualifications for justice of the peace in NRS 4.010. On March 20, 1990, when Brooks' preliminary hearing was conducted, NRS 4.010 provided:

....

2. A justice of the peace in a township whose population is 250,000 or more must be an attorney who is licensed and admitted to practice law in the courts of this state. A justice of the peace in a township whose population is less than 250,000 must have a high school diploma or its equivalent as determined by the state board of education.

3. Subsection 2 does not apply to any person who held the office of justice of the peace on June 30, 1987.⁸

We take judicial notice of the fact that Marley Robinson was a justice of the peace on June 30, 1987.⁹ Because she held office on June 30, 1987,

⁶(emphasis added).

⁷Goodson v. State, 115 Nev. 443, 445, 991 P.2d 472, ___ (1999) (citing Nev. Const. art 6, § 8).

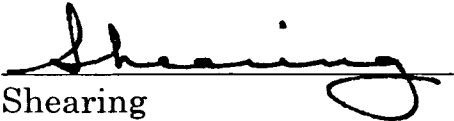
⁸We note that this statute has since been amended. See 1999 Nev. Stat., ch. 41, § 4, at 94; ch. 322, §§1-3, at 1347-48. .

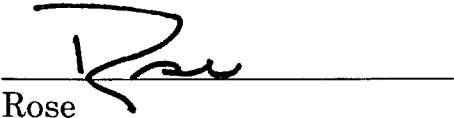
⁹See NRS 47.130; Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1313 (1972).

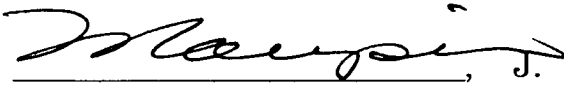
Marley Robinson was not required to be a licensed attorney. Brooks has otherwise failed to demonstrate that Justice of the Peace Robinson was not qualified. We conclude that Marley Robinson was a qualified justice of the peace, the district court had jurisdiction to impose the sentence, and Brooks' sentence was facially legal.¹⁰ 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 Brooks is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED:


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Nancy M. Saitta, District Judge
Kevin Brooks
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See NRS 205.060; NRS 207.010.

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).