IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED MARCHBANK, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40949

FILED

JAN 0 5 2004

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Fred Marchbank, Jr.'s motion to correct an illegal sentence.

On July 25, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of 150 months in the Nevada State Prison with parole eligibility in 60 months. The district court further imposed a mandatory special sentence of lifetime supervision pursuant to NRS 176.0931.

On October 24, 2002, appellant filed a motion to correct an illegal sentence, a motion for an evidentiary hearing, and a motion for the appointment of counsel. The district court denied appellant's motions. This appeal followed.

Appellant first contends that the mandatory sentence of lifetime supervision is illegal because he was not informed in specific detail of the true nature and effect of the terms and conditions of lifetime supervision. In addition, he claims that at the plea canvass, the district

court did not make an affirmative statement that lifetime supervision was mandatory.

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] "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.'"[2]

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence is facially legal, and there is no indication in the record that the district court was without jurisdiction in the instant case.[3] Further, NRS 176.0931 requires imposition of a special sentence of lifetime supervision if the defendant is convicted of a sexual offense. The crime of attempted sexual assault is a sexual offense.[4] Appellant was informed in the written guilty plea

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

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

[3]See NRS 193.330; NRS 200.366; NRS 176.0931.

[4]See NRS 176.0931(5)(b)(1), (2).

agreement, which he signed and stated he understood, that he would "be required to be on lifetime supervision pursuant to NRS 176.0931." In addition, at the plea canvass the district court specifically asked appellant whether he understood that he "could be subject to lifetime supervision pursuant to this plea?" Appellant responded in the affirmative. Therefore, the record of the plea canvass and the written guilty plea agreement sufficiently reflect that appellant was "specifically advised that lifetime supervision is a consequence of the plea," which is all that this court requires.[5]

Appellant also contends that the district court erred in denying his motion without an evidentiary hearing because his claims contain factual allegations that must be explored. We conclude that the district court did not err. One is entitled to an evidentiary hearing only when he raises claims which are not belied by the record and, if true, would entitle him to relief.[6] Here, appellant's claim that he was not advised of lifetime supervision is belied by the record. Therefore, appellant was not entitled to an evidentiary hearing.

Lastly, appellant claims that the district court erred in not appointing counsel pursuant to NRS 34.750. We conclude that the district court did not err. NRS 34.750 makes the appointment of counsel a discretionary act of the district court and applies to petitioners who file

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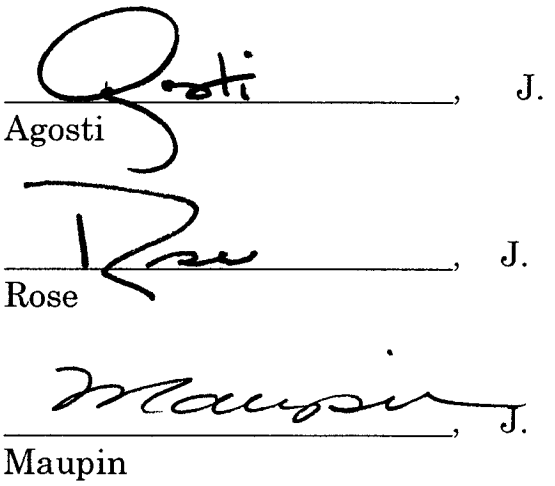
[5]Palmer v. State, 118 Nev. ___, ___, 59 P.3d 1192, 1197 (2002).

[6]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

post-conviction petitions for writs of habeas corpus. Appellant did not file a post-conviction petition for a writ of habeas corpus.

We conclude that the district court did not err in denying appellant's motion without an evidentiary hearing and without appointing counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Agosti

_____, J.
Rose

_____, J.
Maupin

cc: Hon. Connie J. Steinheimer, District Judge
Bruce D. Voorhees
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk