

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAY REMO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40965

RAY REMO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41769

FILED

DEC 19 2003

ORDER OF AFFIRMANCE

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

Docket No. 40965 is a proper person appeal from an order of the district court denying appellant Ray Remo's motion to correct an illegal sentence. Docket No. 41769 is a proper person appeal from an order of the district court denying Remo's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹

On March 28, 2001, the district court convicted Remo, pursuant to a guilty plea, of attempted sexual assault of a child under fourteen years of age. The district court sentenced Remo to serve a maximum term of 240 months in the Nevada State Prison with a possibility of parole after 42 months had been served. The district court

¹See NRAP 3(b).

also sentenced Remo to a term of lifetime supervision. No direct appeal was taken.

Docket No. 40965

On October 29, 2002, Remo filed proper person motions in the district court to correct an illegal sentence, for the appointment of counsel, and for an evidentiary hearing. The State opposed these motions. Remo filed a reply. On February 18, 2003, the district court denied Remo's motions. This appeal followed.

NRS 176.555 provides that a district court may correct an illegal sentence at anytime. 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.² "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.'"³

In his motion, Remo claimed that he did not understand what lifetime supervision entailed at the time he entered his guilty plea. He further claimed that he was not informed about the psychiatric panel requirement for parole eligibility.

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

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Based upon our review of the record of appeal, we conclude that the district court did not err in denying Remo's motion. Remo's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Remo's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction in the instant case.⁴ 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 of a child under fourteen years of age is a sexual offense. Remo was informed in the written guilty plea agreement that the district court would include as part of his sentence, in addition to any other penalties, a special sentence of lifetime supervision. Therefore, we affirm the order of the district court denying Remo's motion.

Docket No. 41769

On April 22, 2003, Remo filed a proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Remo or to conduct an evidentiary hearing. On July 18, 2003, the district court denied Remo's petition. This appeal followed.

Remo's petition was filed more than two years after the entry of the judgment of conviction. Thus, Remo's petition was untimely.⁵

⁴NRS 200.366; NRS 193.330(1)(a)(1).

⁵See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction).

Remo's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice.⁶

In an attempt to demonstrate cause for the delay, Remo claimed that his trial counsel did not inform him of post-conviction remedies, he would have appealed if his counsel had been effective, and this court had not yet decided Palmer v. State.⁷

Based on our review of the record of appeal, we conclude that the district court did not abuse its discretion in determining that Remo failed to show good cause for the delay.⁸ Counsel was not required to inform Remo of post-conviction remedies.⁹ Remo failed explain why he did not bring a timely claim of ineffective counsel.¹⁰ Finally, even assuming, without deciding, that Palmer would apply retroactively and thus explain

⁶See id.

⁷118 Nev. ___, 59 P.3d 1192 (2002) (holding that a defendant must be informed of lifetime supervision as it is a direct consequence of the plea).

⁸Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989) (holding, in general, that a lower court's determination regarding the existence of good cause will not be disturbed absent a clear abuse of discretion).

⁹See generally Thomas v. State, 115 Nev 148, 150, 979 P.2d 222, 223 (1999) (holding "that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal").

¹⁰See Hathaway v. State, 119 Nev. ___, ___, 71 P.3d 503, 506 (2003).


Remo's delay in filing the petition,¹¹ Remo failed to demonstrate that the holding in Palmer would warrant relief in his case. Remo was informed of lifetime supervision in the written guilty plea agreement. Therefore, we affirm the order of the district court denying Remo's petition.

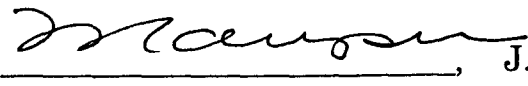
Conclusion

Having reviewed the records on appeal and for the reasons set forth above, we conclude that Remo is not entitled to relief and that briefing and oral argument are unwarranted.¹² Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹³


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

¹¹See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (stating that good cause might be demonstrated by showing that a legal basis for a claim was not reasonably available during the statutory period for filing the petition).

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹³We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.

cc: Hon. Jackie Glass, District Judge
Ray Remo
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk