

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS RAUL LABORI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41207 **FILED**

JUL 22 2004

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order denying appellant Luis Labori's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 30, 1996, the district court convicted Labori, pursuant to a jury verdict, of first degree kidnapping with the use of a deadly weapon, two counts of sexual assault with the use of a deadly weapon, and possession of a controlled substance.¹ The district court sentenced Labori to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole for first degree kidnapping with the use of a deadly weapon, two consecutive terms of life with the possibility of parole for each count of sexual assault with the use of a deadly weapon, and 12 to 32 months for possession of a controlled substance. The terms for each count were imposed to run concurrently.

¹On March 7, 2003, the district court entered an amended judgment of conviction correcting a clerical error in the original judgment of conviction.

This court affirmed Labori's conviction on direct appeal.² The remittitur issued on October 31, 2000.

On February 10, 2003, Labori filed a proper person motion to correct an illegal sentence. The State opposed the motion. On February 27, 2003, the district court denied Labori's 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.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, Labori claimed that his sentence for sexual assault and first degree kidnapping were erroneously based on the statutory provisions for substantial bodily harm and, as such, exceeded the maximum punishment authorized by statute. Labori also claimed that his judgment of conviction was null and void due to the multiple errors that it contained.

Labori's contention that his sentence for sexual assault exceeds the maximum punishment authorized by NRS 200.366 is not supported by documents before this court. And, his claim that his

²Labori v. State, Docket No. 29551 (Order of Affirmance, October 5, 2000).

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)).

judgment of conviction is null and void falls outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. However, our preliminary review of the record on appeal revealed that the district court might have erroneously denied Labori's claim that his sentence for kidnapping was improperly treated as a sentence based on the "substantial bodily harm" provision of NRS 200.320. NRS 200.320 provides in part:

A person convicted of kidnapping in the first degree . . . shall be punished:

1. Where the kidnapped person suffers substantial bodily harm . . . by imprisonment in the state prison:

....

(b) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

....

2. Where the kidnapped person suffers no substantial bodily harm . . . by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served⁵

(Emphasis added). The difference between a life sentence based on substantial bodily harm and one where there was no substantial bodily harm is the amount of time which a defendant must serve before he or she

⁵We note that this statute was amended in 1995 and that the amendatory provisions apply to offenses which were committed after June 30, 1995. See 1995 Nev. Stat., ch. 443, § 54 at 1184, § 393 at 1340. We further note that Labori committed his offenses on or about December 31, 1995, and January 6, 1996.

is eligible for parole—five years if there is no substantial bodily harm or fifteen years if there is substantial bodily harm.

The district court's judgment of conviction is silent on the issue of substantial bodily harm, and it fails to specify the parole eligibility term.⁶ Nonetheless, we note that the Nevada Department of Corrections' online records indicate that the department may be construing Labori's sentence to be life with the possibility of parole after 15 years are served; a sentence that is available under NRS 200.320, but which exceeds the maximum for first degree kidnapping where the victim did not suffer substantial bodily harm.⁷

Labori claimed that there was no finding that he caused the victim substantial bodily harm. The record on appeal does not belie his claim.⁸ Nothing in the charging document, jury instructions, jury verdict, or judgment of conviction indicates that substantial bodily harm was one of the elements of Labori's crime.⁹

Because the district court's judgment of conviction does not clearly indicate the punishment to be served and may be subject to a

⁶See NRS 176.105(1)(c) (providing that a judgment of conviction must contain the statute under which the defendant was sentenced, as well as the applicable provision of the statute, if necessary to determine parole eligibility).


⁷See NRS 200.320(2)(a).

⁸See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

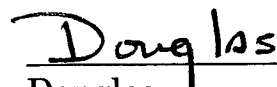
⁹Cf. Lee v. State, 107 Nev. 507, 813 P.2d 1010 (1991). NRS 200.366, like NRS 200.320, provides an enhanced penalty if substantial bodily harm occurred. "[A] conviction for sexual assault with substantial bodily harm requires proof that the substantial bodily harm occurred." Id. at 508, 813 P.2d at 1011.

construction permitting a sentence that is greater than the statutory maximum, the sentence is arguably illegal. This court ordered the State to show cause why this appeal should not be remanded to the district court for further proceedings. The State has responded to our order. The State agrees that Labori's minimum parole eligibility for first degree kidnapping should be set at five years and it does not oppose the remand of this case to district court to correct the sentence. Therefore we reverse the order of the district court in part and remand this matter to the district court to correct the judgment of conviction so that it reflects the requirements of NRS 176.105. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁰


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

¹⁰We have reviewed all documents that Labori has submitted in proper person to the clerk of this court in this matter, and we conclude that Labori is only entitled to the relief described herein. To the extent that Labori has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge
Luis Raul Labori
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk