

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON S. CHANEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41415

FILED

FEB 19 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying appellant Damon Chaney's motion to correct an illegal sentence.

On February 26, 1996, the district court convicted Chaney, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon (Count I), and one count of discharging a firearm into an occupied structure (Count II).¹ The district court sentenced Chaney to serve a term of ten years in the Nevada State Prison for Count I, and a consecutive term of six years for Count II. No direct appeal was taken.

On April 29, 1998, Chaney filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied Chaney's petition. This court affirmed the district court's denial of Chaney's petition.²

¹Chaney was originally convicted of these crimes on July 20, 1994. At that time, the district court committed Chaney to the Department of Prisons regimental discipline program before sentencing. However, Chaney was ineligible for the program.

²Chaney v. State, Docket No. 33315 (Order of Affirmance, May 25, 2001).

On April 11, 2003, Chaney filed the instant motion in the district court.³ The State filed an opposition. Chaney replied. On April 25, 2003, the district court issued an order denying Chaney's motion. This appeal followed.

In his motion, Chaney contended that the juvenile court system had original jurisdiction over his case because he was a juvenile at the time he was taken into custody, and he was never certified as an adult, pursuant to NRS 62.080, before being sentenced in the district court. Thus, Chaney contended that his sentence should be vacated and a hearing should be held on the matter.

A defendant may file a motion to correct an illegal sentence on the basis that the district court was without jurisdiction to impose his sentence.⁴ At the time Chaney committed the crimes, entered his plea, and was sentenced by the district court, NRS 62.040(1)(b) provided that juvenile courts did not have original jurisdiction over a person charged with murder or attempted murder "or any related crime arising out of the same facts as the murder or attempted murder."⁵

Our review of the record reveals that Chaney was originally charged with two counts of attempted murder with the use of a deadly

³Chaney titled his motion "Motion To Vacate Judgment." Given that Chaney's motion challenges the jurisdiction of the district court to impose his sentence, we conclude that his motion is properly construed as a motion to correct an illegal sentence. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

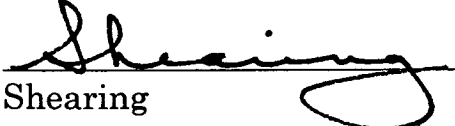
⁴See NRS 176.555; Edwards, 112 Nev. at 708, 918 P.2d at 324.


⁵We note that this provision of NRS 62.040 was amended in 1995 and in 1997. See 1995 Nev. Stat., ch. 309, § 18, at 785, ch. 444, § 2, at 1342, ch. 444, § 18, at 1371-72; 1997 Nev. Stat., ch. 232, § 3, at 832-33.


weapon and one count of discharging a firearm into a structure. Thus, regardless of Chaney's juvenile status, the district court, not the juvenile court system, exercised proper jurisdiction over Chaney's case because the adult certification requirements of NRS 62.080 were inapplicable.⁶ Chaney has failed to demonstrate that his sentence was otherwise illegal. Therefore, we conclude that the district court properly denied Chaney's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Chaney is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

⁶See Elvik v. State, 114 Nev. 883, 894, 965 P.2d 281, 288 (1998) (holding that a juvenile defendant did not need to be certified as an adult, pursuant to NRS 62.080, before being tried and convicted in the district court of first-degree murder and robbery because the offenses were excluded from the juvenile court system's jurisdiction pursuant to NRS 62.040(1)(b)); see also Shaw v. State, 104 Nev. 100, 102-03, 753 P.2d 888, 889 (1988), overruled on other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Valorie Vega, District Judge
Damon S. Chaney
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk