

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42183

FILED

JUN 04 2004

JANETTE BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Frank Martin's motion to correct an illegal sentence.

On September 21, 1999, the district court convicted Martin, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon and one count of possession of a firearm by an ex-felon. The district court sentenced Martin to serve a term of 60 to 156 months in the Nevada State Prison for robbery, an equal and consecutive term for the use of a deadly weapon, and a consecutive term of 28 to 72 months for possession of a firearm. Martin did not file a direct appeal.

On September 30, 1999, Martin filed a proper person petition for a writ of habeas corpus in the district court. On December 27, 1999, the district court denied Martin's petition. Martin did not file an appeal.

On August 21, 2003, Martin filed a proper person motion in the district court to correct an illegal sentence. The State opposed the motion. On September 10, 2003, the district court denied Martin's motion. This appeal followed.

In his motion, Martin claimed that NRS 193.165 was unconstitutionally enacted and, therefore, the district court was without jurisdiction to impose sentence under this statute. Specifically, Martin contended that NRS 193.165 was null and void because the Legislature circumvented the requirements of Article 4, Section 18 of the Nevada Constitution.¹ Martin further argued that this defective legislative process deprived him of due process of law.²

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

¹Nev. Const. art. 4, § 18(1) provides:

Every bill, except a bill placed on a consent calendar adopted as provided in subsection 4, must be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill is pending shall deem it expedient to dispense with this rule. The reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. Except as otherwise provided in subsection 2, a majority of all the members elected to each house is necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of the Senate and Clerk of the Assembly.

²See Rea v. Matteucci, 121 F.3d 483, 485 (9th Cir. 1997) (citing Atkins v. Parker, 472 U.S. 115, 130 (1985)).

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

Our review of the record on appeal reveals that Martin's sentence was facially legal.⁵ The validity of NRS 193.165 was not affected by any irregularities which allegedly occurred in the passage of Assembly Bill 234.⁶ Moreover, we have previously held that NRS 193.165 is constitutional.⁷ As such, the district court had jurisdiction to sentence Martin.⁸ To the extent that Martin claimed that his due process rights were violated, we conclude that his claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Therefore, we conclude that the district court properly denied Martin's motion.

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)).

⁵See NRS 193.165; NRS 200.380; NRS 202.360.

⁶See State v. Beck, 25 Nev. 68, 79-81, 56 P. 1008, 1009-10 (1899) (holding that an enrolled bill, signed by the proper officers of the legislature, approved by the governor, and filed with the secretary of state, is conclusively presumed to have been regularly enacted).

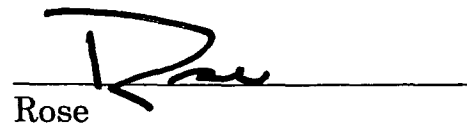
⁷See Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975).

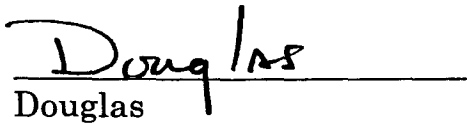
⁸See Nev. Const. art. 6, § 6.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Martin is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Frank Martin
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).