

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAXTON PERNELL SHANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42191

FILED

JUL 22 2004

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On April 21, 1983, the district court convicted appellant, pursuant to a jury verdict, of three counts of battery with intent to commit a crime, two counts of robbery with the use of a deadly weapon, two counts of first-degree kidnapping with the use of a deadly weapon and five counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve multiple life sentences and 30 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on October 2, 1984.

On September 11, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 26, 2003, the district court denied appellant's motion. This appeal followed.

¹Shanklin v. State, Docket No. 14923 (Order Dismissing Appeal, September 13, 1984).

Appellant advanced four arguments in his motion. First, he contended that the information did not provide adequate notice of the charges against him. More specifically, appellant claimed that the information did not contain the elements of the offenses charged. Second, appellant asserted that the sentencing structure announced during his sentencing hearing was ambiguous. Third, appellant argued that prison and parole board officials have misinterpreted the ambiguous sentencing structure. Lastly, appellant contended that he was sentenced to offenses that were not listed in the judgment of conviction.

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.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 We conclude that appellant's first three arguments fall outside the narrow parameters of matters appropriately raised in a motion to correct an illegal sentence. There is no evidence that the district court was without jurisdiction or that the sentence imposed was in excess of the statutory maximum.

Finally, appellant claimed that he was sentenced to several offenses not listed in the judgment of conviction. Our review of the judgment of conviction reveals a clerical error. Although the judgment of conviction set forth the sentence for the sexual assault counts, it failed to

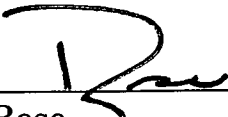
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

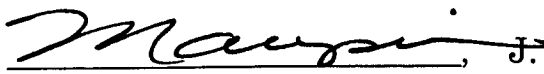
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

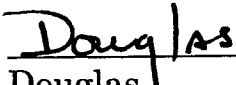
state that appellant was found guilty of five sexual assault counts. We therefore conclude this matter should be remanded to the district court for correction of the judgment of conviction to state that appellant was found guilty of five counts of sexual assault with the use of a deadly weapon.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.⁵


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant 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. Sally L. Loehrer, District Judge
Paxton Pernell Shanklin
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk