

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DAVID HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42260

FILED

FEB 18 2004

ORDER OF AFFIRMANCE

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

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

On February 14, 1983, the district court convicted appellant, pursuant to a guilty plea, of first degree murder and sexual assault causing substantial bodily harm. The district court sentenced appellant to serve two consecutive term of life in the Nevada State Prison without the possibility of parole. No direct appeal was taken. Appellant attempted unsuccessfully to seek post-conviction relief in several proceedings.¹

On August 28, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court.² On October 10, 2003, the district court denied appellant's motion. This appeal followed.

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

¹See e.g., Houston v. State, Docket No. 40652 (Order of Affirmance, November 14, 2003); Houston v. State, Docket No. 36271 (Order of Affirmance, August 7, 2001); Houston v. State, Docket No. 30059 (Order Dismissing Appeal, March 30, 1999); Houston v. State, Docket No. 22706 (Order Dismissing Appeal, December 30, 1991).

²Appellant labeled his motion, a "motion to vacate judgment."

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, appellant contended that his judgment of conviction was void because the district court lacked subject matter jurisdiction to accept his plea or enter a judgment of conviction. Appellant claimed that the district court lacked jurisdiction because the amended information failed to adequately set forth the charged offenses and because the plea agreement contained only conclusory statements about the charged offenses.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.⁵ Further, the district court did not lack jurisdiction to accept appellant's guilty plea or enter a judgment of conviction because the amended information was not fatally defective.⁶ Any claim that appellant's guilty plea was not entered knowingly and voluntarily fell outside the scope of a motion to correct an illegal sentence. Therefore, we affirm the order of the district court denying appellant'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 1977 Nev. Stat., ch. 598, § 5, at 1627-28 (NRS 200.030); 1977 Nev. Stat., ch. 598, § 3, at 1626 (NRS 200.366).


⁶NRS 171.010; NRS 171.085; NRS 173.045(1); NRS 173.075.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael R. Griffin, District Judge
Keith David Houston
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

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