

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DEAN FULLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42630

FILED

JUL 23 2004

ORDER OF AFFIRMANCE

JANETTE H. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On February 16, 1996, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a term of twenty-five years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on March 25, 1998.

On May 22, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. On December 29, 2003, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that due to the ameliorative amendment to NRS 453.3385 on July 1, 1995, his sentence was facially illegal. Appellant argued that because NRS 453.3385 was

---

<sup>1</sup>Fuller v. State, Docket No. 28435 (Order Dismissing Appeal, December 27, 1998).

amended prior to sentencing, he was entitled to the benefit of the statutory amendment under Sparkman v. State.<sup>2</sup>

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.<sup>3</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion to correct an illegal sentence. In amending the provisions of NRS 453.3385, the legislature expressly provided that the amendments do not apply to "offenses which are committed before July 1, 1995."<sup>4</sup> These provisions clearly evince the legislature's intent that the amendments to NRS 453.3385 are to be applied prospectively only based on the date the offense was committed. In addition, appellant's reliance on Sparkman is misplaced. Unlike the amendments at issue in Sparkman, the legislature expressly stated that the amendments to NRS 453.3385 do not apply to offenses committed before July 1, 1995.

Here, appellant's offense was committed on June 27, 1995; therefore, the 1995 amendments do not apply. Moreover, we note that the sentence imposed by the district court was within the statutory guidelines as they existed at the time of appellant's offense. Therefore, appellant

---

<sup>2</sup>95 Nev. 76, 590 P.2d 151 (1979).


<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


<sup>4</sup>1995 Nev. Stat., ch. 443 , § 393, at 1340.

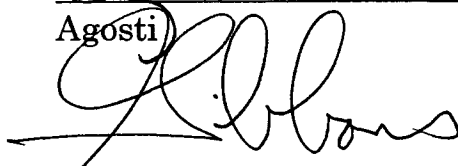
failed to demonstrate that his sentence was illegal.<sup>5</sup> Accordingly, the district court did not err in denying appellant's motion.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Steven P. Elliott, District Judge  
Robert Dean Fuller  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>5</sup>See Edwards, 112 Nev. at 708, 918 P.2d at 324.

<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We 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.