

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON LATERRELL HARRIS, SR.
A/K/A AARON C. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42756

FILED

JUL 23 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 6, 1990, the district court convicted appellant Aaron Laterrell Harris, Sr., pursuant to a jury verdict, of two counts of sale of a controlled substance, one count of conspiracy to sell a controlled substance, and one count of trafficking in a controlled substance. The district court sentenced Harris to serve two terms of 20 years in prison for the sale counts (counts I & II), a term of 3 years in prison for the conspiracy count (count III), and a term of 30 years in prison for the trafficking count (count IV). This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on October 22, 1991.

On July 31, 2001, Harris filed a proper person motion to correct an illegal sentence in the district court, arguing that the 30-year

¹Harris v. State, Docket No. 21566 (Order Dismissing Appeal, September 30, 1991).

sentence imposed was illegal and that he relied on an ambiguous statement made by the sentencing judge in believing that he was entitled to concurrent sentences. The State opposed the motion. Thereafter, the district court entered an amended judgment of conviction on December 5, 2001. The amended judgment of conviction interpreted the ambiguity in the original judgment of conviction in Harris's favor ordering all counts to run concurrently. The amended judgment also stated that Harris was not eligible for parole on count IV, the 30-year prison term, until he served a mandatory minimum term of 25 years.

On January 5, 2004, Harris filed a motion to correct an illegal sentence.² The State opposed the motion. After hearing arguments from counsel, the district court denied the motion. Harris filed the instant appeal.

Harris contends that the district court erred in denying the motion because the sentence imposed in the amended judgment conviction is facially illegal. Specifically, Harris argues that, pursuant to NRS 213.120, he should be eligible for parole on count IV, the 30-year prison term, in 10 years, rather than 25 years as set forth in the amended judgment. We disagree.

NRS 213.120(1) states that “[e]xcept as otherwise provided . . . by statute for certain specified offenses, a prisoner who was sentenced to prison for a crime committed before July 1, 1995, may be paroled when he

²Harris had previously filed motions challenging the legality of the sentence imposed in the amended judgment on June 17, 2002, and September 4, 2003. Those motions were denied.

has served one-third of the definite period of time for which he has been sentenced.” (Emphasis Added.) However, NRS 213.120(1) is inapplicable to Harris because the statute under which he was convicted included a mandatory minimum prison term. In particular, when Harris committed the trafficking offense in 1990, NRS 453.3405(1) explicitly provided that a defendant convicted of a violation of NRS 453.3385 must serve a mandatory minimum term of imprisonment of no less than 25 years before being eligible for parole.³ Although in 1995 the legislature amended NRS 453.3385 reducing the statutory penalties, in so doing, the legislature expressly stated that the amendments do not apply to offenses committed before July 1, 1995.⁴ Therefore, the district court did not err in concluding that Harris was ineligible for parole until he has served a 25-year mandatory minimum prison term.

Harris also argues that, pursuant to Ward v. State,⁵ the sentencing court's ambiguous statements about time computation should be construed in Harris's favor legally entitling him to a sentence with parole eligibility in 5 years. In particular, Harris argues that he reasonably believed that he would be eligible for parole after 5 years based

³See 1985 Nev. Stat., ch. 78, § 2, at 159; 1983 Nev. Stat., ch. 111, § 2, at 287.

⁴See 1995 Nev. Stat., ch. 443, § 296, at 1288; 1995 Nev. Stat., ch. 443, § 393, at 1340.

⁵93 Nev. 501, 569 P.2d 399 (1977) (holding that the defendant was entitled to rely on favorable construction of ambiguous sentence which, under the unique facts of the case, entitled him to credit for time served).

on the sentencing court's comment that "[t]he time computations in this matter then will be one to five time spent as to each of them." We conclude that Harris's contention lacks merit.

Preliminarily, we note that our holding in Ward was expressly limited to the "unique circumstances of [that] case."⁶ Additionally, we conclude that Harris's purported belief that he was entitled to parole eligibility in 5 years is unreasonable in light of the fact that: (1) both the prosecutor and defense counsel stated at sentencing that Harris was required to serve a mandatory minimum prison term of 25 years; and (2) the sentencing court's allegedly ambiguous comment does not reference parole eligibility. Moreover, as we have previously discussed, the trafficking offense that Harris committed in 1990 requires the imposition of a 25-year mandatory minimum prison term.

Finally, Harris contends that the sentence imposed in the amended judgment of conviction violates his double jeopardy rights because the unnecessary language with regard to parole eligibility has resulted in a "de facto increase" in the prison term Harris must serve.

As a preliminary matter, we note that Harris's claim regarding a purported violation of his constitutional rights exceeds the scope of permissible claims that may be raised in a motion to correct an illegal sentence.⁷ Nonetheless, as an independent ground for denying

⁶Id. at 503, 569 P.2d at 400.

⁷See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (recognizing that a motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was
continued on next page . . .

relief, we conclude that the district court did not err in rejecting Harris's contention.

In Miranda v. State, this court explained that in order to comport with the Double Jeopardy Clause of the Nevada Constitution the sentencing court "may correct an illegal sentence by increasing its severity only when necessary to bring the sentence into compliance with the pertinent statute."⁸ In this case, we conclude that Harris's double jeopardy rights were not violated because the language regarding parole eligibility in the amended judgment did not increase the severity of the original sentence. Although the original judgment of conviction was silent with regard to parole eligibility, under the pertinent statutes in force at the time the offense was committed, Harris was required to serve a mandatory minimum prison term of 25 years before being eligible for parole. Accordingly, because the sentence set forth in the amended judgment of conviction was facially legal, we conclude that the district court did not err in denying Harris's motion to correct an illegal sentence.⁹

... continued

without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum).

⁸114 Nev. 385, 387, 956 P.2d 1377, 1378 (1998).

⁹On April 12, 2004, Harris's counsel filed a motion to withdraw and a response to this court's prior order to show cause. Because Harris's counsel has complied with this court's order, we conclude that no sanctions are warranted. Additionally, cause appearing, we grant the motion to withdraw.

Having considered Harris's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.¹⁰

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Law Office of John J. Momot
Aaron Laterrell Harris, Sr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰Because Harris is represented by counsel in this matter, we decline to grant Harris permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Harris unfiled all proper person documents he has submitted to this court in this matter.