

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY LEE BIAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42817

FILED

JUL 22 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. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On March 21, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, two counts of robbery with the use of a deadly weapon and three counts of first degree kidnapping with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced him to serve three consecutive life terms in the Nevada State Prison with the possibility of parole after ten years. The remaining terms were imposed to run concurrently. This court issued an order affirming in part and reversing in part appellant's appeal from his judgment of conviction and

sentence.¹ The remittitur issued on November 9, 2001. An amended judgment of conviction was entered on January 25, 2002, sentencing appellant to serve one term of life in the Nevada State Prison with parole eligibility after ten years.

On January 12, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 6, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he did not receive proper notice of the State's intent to seek adjudication of him as a habitual criminal under NRS 207.010. Specifically, appellant asserted that the State should have filed an amended information instead of simply filing a notice of its intent to seek a habitual criminal adjudication.²

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

¹Bias v. State, Docket No. 35982 (Order Affirming in Part and Reversing in Part, October 9, 2001). This court reversed appellant's conviction on the kidnapping charges because they were incidental to the robbery.

²On June 21, 1999, the State filed a notice of intent to seek adjudication of appellant as a habitual criminal.

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

Appellant's claim is outside the scope of a motion to correct an illegal sentence because it challenges his judgment of conviction. As there is nothing in the record to suggest that the district court was without jurisdiction to impose appellant's sentence, and his sentence is within the range prescribed by the applicable statutes, the district court did not err in denying this claim. Moreover, in a prior habeas corpus petition, appellant claimed that his appellate counsel was ineffective for not challenging the State's alleged inadequate notice of its intent to seek a habitual criminal adjudication. This court concluded that the State's notice was sufficient.⁵ Consequently, our ruling on this matter became law of the case and cannot be relitigated in any subsequent appeal.⁶

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

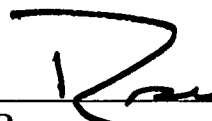
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

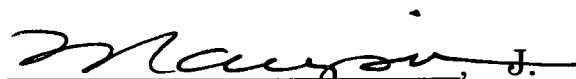
⁵Bias v. State, Docket No. 40688 (Order of Affirmance, December 3, 2003).


⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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.⁸


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John S. McGroarty, District Judge
Henry Lee Bias
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

⁸We 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.