

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42848

FILED

JUL 19 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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; Sally L. Loehrer, Judge.

On June 11, 1993, the district court convicted appellant pursuant to jury verdict of one count of possession of stolen property and one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced him to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. On direct appeal, this court reversed appellant's conviction for burglary but upheld his conviction for possession of stolen property.¹ The judgment of conviction was subsequently amended twice.

On January 26, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 11, 2004, the district court denied appellant's motion. This appeal followed.

¹Bailey v. State, Docket No. 24609 (Order of Remand, May 24, 1994).

In his motion, appellant contended that the district court erred in adjudicating him a habitual criminal because he was not charged with the habitual criminal enhancement.

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

Our review of the record on appeal reveals that this court previously concluded that the district court properly adjudicated appellant a habitual criminal.⁴ The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁵ Moreover, Bailey's claims fell outside of the very narrow scope of claims permissible in a motion to correct an illegal sentence. Finally, the record on appeal belies Bailey's claim; the record includes an amended information that provided Bailey with notice that the State was pursuing habitual criminal status.

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)).

⁴Bailey v. State, Docket No. 27269 (Order of Remand, November 2, 1995).

⁵Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Anthony Bailey
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

⁷We 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.