

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42881

FILED

AUG 23 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. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On November 3, 1998, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve a term of 24 to 72 months for count I and a term of 16 to 72 months for count II in the Nevada State Prison. The district court suspended appellant's sentence as to count II and placed him on probation for a term not to exceed 36 months. The district court also ordered count II to run consecutively to count I. Appellant did not file a direct appeal.

On February 10, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. On February 9, 2004, 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 jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.¹ "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.'"²

In his motion, appellant contended that his punishment was disproportionate to his crimes. Specifically, he argued that his crimes were more appropriately defined as petit larceny, not burglary. We conclude that appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. The terms for appellant's sentences were facially legal,³ and there is no indication that the district court was without jurisdiction. Appellant entered a guilty plea to two counts of burglary and may not challenge the validity of his plea in the instant motion. Thus, we conclude that the district court did not err in denying appellant's motion.

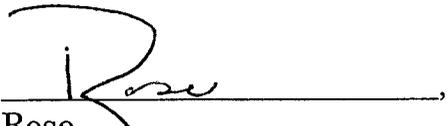
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

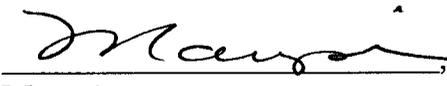
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

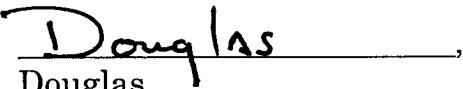
³See NRS 205.060.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We 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.

cc: Hon. James W. Hardesty, District Judge
Ferrill Joseph Volpicelli
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk