

*Steven D. Grierson*

1 ODM

2 DISTRICT COURT

No. 76075

3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

Case No. C-14-296556-1  
Dept. No. XXII

FILED

6 Plaintiff,

JUN 13 2018

7 Vs.

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

8 JUSTIN ODELL LANGFORD, #2748452,

9 Defendant.

10  
11 **ORDER DENYING DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT**  
12 **ILLEGAL SENTENCE AND "JUDICIAL NOTICE OF LACK OF JURISDICTION"**

13 These matters concerning Defendant JUSTIN ODELL LANGFORD'S:

- 14 1. Motion to Modify and/or Correct Illegal Sentence; and  
15 2. "Judicial Notice of Lack of Jurisdiction,"

16 filed March 30, 2018, both came on for hearing on the 24<sup>th</sup> day of April 2018 at the hour of 8:30  
17 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada,  
18 with JUDGE SUSAN H. JOHNSON presiding; Plaintiff THE STATE OF NEVADA appeared by  
19 and through its attorney, STEVEN L. WATERS, ESQ., Chief Deputy District Attorney; and  
20 Defendant JUSTIN ODELL LANGFORD, being incarcerated in the Nevada Department of  
21 Corrections (NDOC), made no appearance. Having reviewed the papers and pleadings on file  
22 herein, heard oral arguments of Plaintiff's counsel, and found good cause therefore,  
23

24 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

- 25 1. By way of Information filed March 14, 2015, JUSTIN ODELL LANGFORD was  
26 charged with committing the following crimes:  
27 ...  
28

1 COUNTS 1, 2, 6, 7, 8, 10, 11 and 12 – LEWDNESS WITH A CHILD UNDER THE AGE  
2 OF 14 (Category A Felony) in violation of NRS 201.230;

3 COUNTS 3, 4 and 5 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN  
4 YEARS OF AGE (Category A Felony) in violation of NRS 200.364 and 200.366); and

5 COUNT 9 – CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony) in  
6 violation of NRS 200.508(1).

7  
8 2. The matter was tried by jury in this Court for a period of nine (9) days in March  
9 2016; ultimately, the jury returned a verdict of guilty as to COUNT 2 only; he was found not guilty  
10 of committing the other counts. On May 10, 2016, this Court sentenced MR. LANGFORD to serve  
11 life with the possibility of parole after a term of ten (10) years in the Nevada Department of  
12 Corrections with 841 days credit for time served. The Judgment of Conviction was filed May 17,  
13 2016.

14  
15 3. On June 6, 2016, MR. LANGFORD filed a Notice of Appeal, and approximately one  
16 year later, on June 27, 2017, the Nevada Supreme Court affirmed the Judgment of Conviction with  
17 the Remittitur issued on July 28, 2017.

18 4. After the Nevada Supreme Court's affirmance, MR. LANGFORD filed a plethora of  
19 motions in this case, including, but not limited to:

20  
21 A. Motions (1) to Modify and/or Correct Sentence, (2) for Sentence Reduction,  
22 (3) for Production of Documents, Papers, Pleadings and Tangible Property of Defendant, (4)  
23 for Transcripts at State's Expenses, (5) to Obtain Copy of Sealed Record and (5) to  
24 Withdraw Counsel, all filed July 19, 2017;

25 B. Motions (1) to Claim and Exercise Rights Guaranteed by the Constitution of  
26 the United States of America and Require the Presiding Judge to Rule upon this Motion and  
27 All Public Officers of this Court to Uphold Said Rights, (2) to Reconsider Transcripts at  
28

1 State's Expense, (3) to Compel Court Orders, and (4) to Reconsider Motions for Correction  
2 of Illegal Sentence and Sentence Reduction, all filed October 10, 2017;<sup>1</sup>

3 C. Motions for (1) Ancillary Services and (2) Transcripts and Other Court  
4 Documents at State's Expense filed November 27, 2017;<sup>2</sup>

5 D. "Notice of Understanding of Intent and Claim of Right as well as a Notice of  
6 Denial of Consent," Petition for Writ of Habeas Corpus (Post-Conviction), Motion for  
7 Appointment of Counsel and Request for Evidentiary Hearing, all filed December 29, 2017;

8 E. Motion for Summary Judgment on Petition for Writ of Habeas Corpus (Post-  
9 Conviction) Due to Respondent's Silence filed March 7, 2018;<sup>3</sup> and

10 F. Motions to Strike State's Response and for Stay of Sentence both filed March  
11 15, 2018.

12  
13  
14 5. This Order addresses the latest motion filed by MR. LANGFORD on March 30, 2018  
15 that seeks to modify or correct an "illegal" sentence which appears to be based upon the Justice  
16 Court, Boulder City Township's "lack of jurisdiction."

17 **CONCLUSIONS OF LAW**

18 1. NRS 34.724(2) provides in pertinent part:

19 Such a petition [for writ of habeas corpus filed post conviction]:

20  
21 (a) Is not a substitute for and does not affect any remedies which *are incident*  
22 *to the proceedings in the trial court* or the remedy of direct review of the sentence or  
23 conviction.

24 ...

25 <sup>1</sup>This Court denied MR. LANGFORD'S Motions to Modify and/or Correct Sentence, for Sentence Reduction  
26 and for Transcripts at State's Expense in hearing held August 10, 2017.

27 <sup>2</sup>This Court previously denied MR. LANGFORD'S motions filed October 10, 2017, which included that for  
28 reconsideration of his seeking transcripts at State's expense in hearing of October 31, 2017.

<sup>3</sup>Within that motion, MR. LANGFORD pointed out the STATE filed its return or response to the Post-  
Conviction Petition for Habeas Corpus one day late, on February 20, 2018. However, as pointed out by the STATE in  
its Response (Defendant was seeking to later strike), February 19, 2018 was Presidents' Day, a national holiday and non-  
judicial day, whereby its return or response was due for filing the next judicial day, which was February 20, 2018.

(b) Comprehends and takes place of all other common law, statutory or other remedies which have been available for challenging the *validity of the conviction or sentence*, and must be used exclusively in place of them. (Emphasis added)

2. There are two types of post-conviction challenges to judgments of conviction that are “incident to the proceedings in the trial court,” and thus, excepted by NRS 34.724(2)(a) from the provisions of the habeas statutes: (1) a motion to modify a sentence based upon very narrow due process grounds, and (2) one to correct a facially illegal sentence. Passanisi v. State, 108 Nev. 318, 831 P.2d 1371 (1992), *overruled on other grounds*, Harris v. State, 130 Nev. \_\_\_, 329 P.3d 619 (2014). In all other cases, post-conviction challenges to “the validity of [a] conviction or sentence” must be brought pursuant to NRS 34.720 through 34.830. *See* NRS 34.724(2)(b).

3. The power of the district court to correct an illegal sentence is inherent. *See Edwards v. State*, 112 Nev. 704, 707-708, 918 P.2d 321, 324 (1996), *citing Passanisi*, 108 Nev. 318, 321, 831 P.2d 1372 (1992). Such inherent authority to correct, vacate or modify a sentence is based upon a materially untrue assumption or mistake of fact that has worked to the defendant’s extreme detriment, *but only if* the mistaken sentence “is the result of the sentencing judge’s misapprehension of a defendant’s criminal record.” Edwards, 112 Nev. at 707, 918 P.2d at 324, *quoting State v. District Court*, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984) (emphasis added by the Edwards court).

4. NRS 176.555 provides: “The [district] court may correct an illegal sentence at any time.” An “illegal sentence” for purposes of NRS 176.555 has been defined as “one ‘at variance with the controlling sentencing statute,’ or ‘illegal’ in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided....” Edwards, 112 Nev. at 708, 918 P.2d at 324, *quoting Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985), *in turn, quoting Prince v. United States*, 432 A.2d 720, 721 (D.C. 1981) and Robinson v. United States, 454 A.2d 810, 813 (D.C. 1982). A motion to correct an illegal

1 sentence "presupposes a valid conviction and may not, therefore, be used to challenge alleged errors  
2 in proceedings that occur prior to the imposition of sentence." *Id.* In other words, a motion to  
3 correct an illegal sentence is an appropriate vehicle for raising the claim a sentence is facially illegal  
4 at any time; however, such a motion cannot be used to challenge the validity of a judgment of  
5 conviction or sentence based upon alleged errors occurring at trial or sentencing. Issues concerning  
6 the validity of a conviction or sentence must be raised in habeas proceedings. NRS 34.724(2)b);  
7 also see State v. Meier, 440 N.W.2d 700, 703 (N.D. 1989).  
8

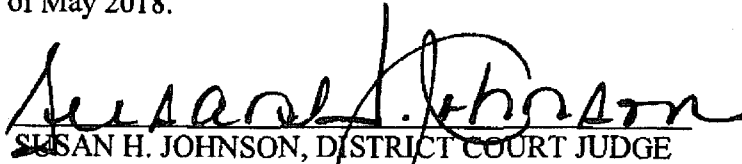
9       5. In this case, MR. LANGFORD does not argue or allege this Court sentenced him  
10 based upon a materially false assumption of fact that worked to his detriment and violated his right  
11 to due process. If anything, by way of his "Judicial Notice of Lack of Jurisdiction," MR.  
12 LANGFORD seems to challenge the jurisdiction of the justice court in Boulder City. He claims the  
13 justice court deprived the district court over the charges it allowed to be added to the Information.  
14 Contrary to MR. LANGFORD'S misguided premise, the justice court, at no time, deprived this  
15 Court of jurisdiction. MR. LANGFORD was charged with committing various crimes by the  
16 STATE OF NEVADA by and through its attorneys, i.e. the Clark County District Attorney's Office.  
17 MR. LANGFORD was accorded a preliminary hearing on March 11, 2014, where the justice of the  
18 peace heard testimony, considered evidence and ultimately determined there was reasonable cause to  
19 believe Defendant committed the crimes and bound over the case to the district court. In short, the  
20 justice court did not "deprive" this Court of jurisdiction.  
21

22       6. Notwithstanding the aforementioned, there is nothing in this Court's record to  
23 demonstrate the justice court even allowed the addition of any charges to the Information. The  
24 Information was never amended to include additional charges throughout the case's tenure.  
25 However, *even if* they were added, this Court sees no unfair detriment to Defendant, especially the  
26 jury found MR. LANGFORD guilty of committing only one count.  
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28

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant's Motion to Modify and/or Correct Illegal Sentence and "Judicial Notice of Lack of Jurisdiction" filed March 30, 2018 are denied.

DATED this 31<sup>st</sup> day of May 2018.

  
SUSAN H. JOHNSON, DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify on the 31<sup>st</sup> day of May 2018 I electronically served (E-served), placed within the attorney's folder located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER DENYING DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND "JUDICIAL NOTICE OF LACK OF JURISDICTION" to the following party and counsel of record, and that first-class postage was fully prepaid thereon:

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Laura Banks, Judicial Executive Assistant