

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY EARL DOWNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50704

FILED

APR 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On June 28, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of forgery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's judgment of conviction and sentence on direct appeal.¹ Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

¹Downs v. State, Docket No. 36503 (Order of Affirmance, July 12, 2001).

²Downs v. State, Docket No. 39757 (Order of Affirmance, April 10, 2003). Additionally, appellant filed a motion to amend the judgment of conviction to include all presentence custody credit. The district court denied the motion, and this court dismissed the subsequent appeal as it
continued on next page . . .

On October 16, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 27, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he should receive 283 days of additional credits for time served in custody from December 7, 1999, the date that he was sentenced in another district court case, and September 15, 2000, the date that he was sentenced in the instant case.

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.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

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is no

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was untimely filed. Downs v. State, Docket No. 49606 (Order Dismissing Appeal, July 24, 2007).

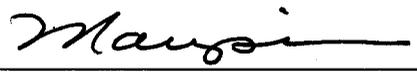
³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

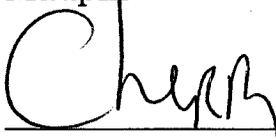
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

indication that the district court was without jurisdiction in the matter.⁵ A claim for additional presentence credits is a claim challenging the validity of the judgment of conviction and sentence that must be raised on direct appeal or in a post-conviction petition for a writ of habeas corpus in compliance NRS chapter 34.⁶ Therefore, we affirm the order of the district court.

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.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁵See NRS 207.010(1)(b)(2).

⁶See Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006). We express no opinion as to whether petitioner could satisfy the procedural requirements of NRS chapter 34.

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

cc: Hon. Kenneth C. Cory, District Judge
Jimmy Earl Downs
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk