

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE WATSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52248

**FILED**

**OCT 21 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 15, 2007, the district court convicted appellant, pursuant to a guilty plea, of attempted battery constituting domestic violence with the use of deadly weapon resulting in substantial bodily harm. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. No direct appeal was taken.

On April 23, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court challenging the computation of his work and good time credits. The State filed a motion to dismiss, arguing that the petition was not in the proper form, nor had it been served on the attorney general or warden. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 26, 2008, the district court dismissed appellant's petition. No appeal was taken.

On May 30, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus and motion to correct an illegal sentence in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 26, 2008, the district court denied appellant's petition. This appeal followed.

#### Post-Conviction Petition for a Writ of Habeas Corpus

In his petition, appellant claimed that he received ineffective assistance of counsel because counsel failed to file a motion or a post-conviction petition for a writ of habeas corpus regarding his being classified as a level III sexual offender.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland v. Washington, 466 U.S. 668, 697 (1984).

Our review of the record on appeal reveals that appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. According to the documentation provided by the State, appellant's status was not affected by his conviction in this case. Rather,

appellant's sexual offender status changed prior to the judgment of conviction being entered in this case and the change was based on a change in the law.<sup>1</sup> Appellant failed to demonstrate that there was a reasonable probability that this classification impacted his decision to enter a guilty plea. Therefore, the district court did not err in denying appellant's petition.

#### Motion to Correct Illegal Sentence

In his motion, appellant claimed that his sentence was illegal because the district court did not inform him that his sexual offender status would be affected by his conviction. 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. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "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.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Based upon our review of the record on appeal, we conclude that appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in this matter. See NRS 33.018,

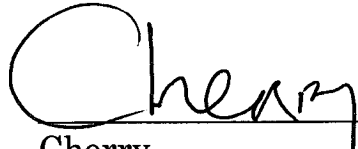
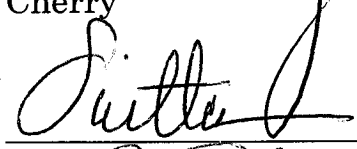

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<sup>1</sup>Appellant had a prior conviction for sexual assault.

200.481, 200.485, and 193.330. Therefore, the district court did not err in denying appellant's motion.

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

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

\_\_\_\_\_, J.  
Cherry  
\_\_\_\_\_, J.  
Saitta  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Kenneth Wayne Watson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>2</sup>We 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.