

IN THE SUPREME COURT OF THE STATE OF NEVADA

KELLY M. COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39298

FILED

JUL 10 2002

WILLIAM E. ELSON
CLERK OF SUPREME COURT
NEVADA

ORDER REVERSING, VACATING JUDGMENT IN PART, AND
REMANDING

This is an appeal from an order of the district court denying appellant Kelly M. Collins' motion to correct an illegal sentence.

On July 3, 2001, Collins was convicted, pursuant to a guilty plea, of one count of trafficking in a controlled substance, a category B felony. The district court sentenced Collins to serve a prison term of 24-72 months to run concurrently with a sentence in another state, and ordered him to pay restitution in the amount of \$2,900.00 to the South Lake Tahoe Narcotic Task Force ("Task Force").

On January 23, 2002, Collins filed a motion to correct an illegal sentence in the district court. The State did not oppose the motion. Nevertheless, on February 21, 2002, the district court denied the motion. This timely appeal followed.

Collins' sole contention is that his sentence is illegal and that the order of restitution should be set aside. More specifically, Collins relies on this court's decision in Igbinovia v. State¹ for the proposition that the district court erred in ordering him to pay restitution to the Task Force for money he received in exchange for the purchase of controlled

¹111 Nev. 699, 895 P.2d 1304 (1995).

substances. We agree with Collins' argument and conclude that, based on the facts of this case, the Task Force, as a governmental agency, does not qualify as a victim eligible to receive restitution.²

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 Further, this court has stated that an order of restitution is proper when the victim, including a governmental agency, suffers unexpected harm or loss, and not when the victim voluntarily participates in the harm or loss.⁵

Based upon our review of the record on appeal, we conclude that the district court erred in ordering Collins to pay restitution to the Task Force, and in denying Collins' motion to correct an illegal sentence. Collins was ordered to pay the Task Force restitution in the amount of \$2,900.00 - the amount expended by the Task Force as drug "buy money" in its pursuit of Collins as a trafficker of controlled substances. The Task

²See id. at 707, 895 P.2d at 1308; see also NRS 176.015(5)(b)(1); NRS 176.033(1)(c).

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)).

⁵See Roe v. State, 112 Nev. 733, 735, 917 P.2d 959, 960 (1996); Igbinovia, 111 Nev. at 707, 895 P.2d at 1308.


Force was a voluntary participant in the exchange of money for drugs with Collins, and based on this court's holdings in Igbinovia and Roe and the facts of this case, does not qualify as a victim entitled to an award of restitution. Therefore, we conclude that the district court's order of restitution resulted in an illegal sentence, and must be vacated.

Having considered Collins' contention and concluded that he is entitled to relief, we

ORDER the judgment of the district court REVERSED, VACATE the order of restitution, AND REMAND this matter to the district court for the limited purpose of entering an amended judgment of conviction consistent with this order.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Michael P. Gibbons, District Judge
Derrick M. Lopez
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk