

IN THE UTAH COURT OF APPEALS

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Ronald D. Lancaster,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20090257-CA	
v.)		
)	F I L E D	
Alfred Bigelow, Warden,)	(June 25, 2009)	
)		
Respondent.)	<table border="1"><tr><td>2009 UT App 176</td></tr></table>	2009 UT App 176
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Third District, Salt Lake Department, 090903938
The Honorable Ann Boyden

Attorneys: Ronald D. Lancaster, Gunnison, Appellant Pro Se

Before Judges Greenwood, Thorne, and Davis.

PER CURIAM:

Ronald D. Lancaster appeals the trial court's dismissal of his claims. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review. We affirm.

Lancaster filed a motion to correct an illegal sentence in February 2009. The trial court noted that the motion went beyond the scope of rule 22(e) of the Utah Rules of Criminal Procedure and construed it as a petition for post-conviction relief under rule 65C of the Utah Rules of Civil Procedure. The trial court noted that some of the claims had been raised previously and that the remaining claims were frivolous. Accordingly, the motion was dismissed.

Lancaster asserts that the trial court erred in construing his motion to correct an illegal sentence as a post-conviction petition and further asserts that the grounds raised entitle him to relief. Even if we review the motion as one to correct an illegal sentence, we find that the trial court did not err in dismissing Lancaster's claims.

Under rule 22(e), "[t]he court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time." Utah R. Crim. P. 22(e). "A request to correct an illegal sentence under rule 22(e) presupposes a valid conviction." State

v. Brooks, 908 P.2d 856, 860 (Utah 1995). Courts do not have jurisdiction under rule 22(e) to consider a challenge to the underlying conviction. See id.

Lancaster argues that his sentence is illegal because his 1987 conviction of aggravated assault by a prisoner is invalid. He contends that the aggravated assault statute is unconstitutional under State v. Gardner, 947 P.2d 630 (Utah 1997), and therefore his conviction is not legitimate. However, in Gardner, the Utah Supreme Court struck only part of the statute as unconstitutional, ruling that the capital felony provision was invalid. See id. at 653. As noted by the supreme court in a previous appeal by Lancaster, Gardner was inapplicable to Lancaster because he was convicted under a separate and still valid section of the statute. See Lancaster v. Galetka, Case No. 981580. Furthermore, because Lancaster is, in essence, challenging the validity of his conviction rather than the illegality of his sentence, his challenge is beyond the scope of rule 22(e). See Brooks, 908 P.2d at 860.

Lancaster also argues that his maximum sentence should be no longer than thirty years under Utah Code section 76-3-401. See Utah Code Ann. § 76-3-401 (2008). Under section 76-3-401, when consecutive sentences are imposed, the length of imprisonment is limited to a maximum of thirty years. See id. § 76-3-401(6)(a). One exception to that limitation, however, is when a sentence "authorizes the death penalty or a maximum sentence of life imprisonment." See id. § 76-3-401(6)(b)(i); see also State v. Deli, 861 P.2d 431, 434 (Utah 1993) (holding that the thirty-year limitation "does not apply if any of the sentences imposed that are part of the consecutive sentence chain authorize the death penalty or life imprisonment"). Lancaster's sentences are both terms of five years to life. Accordingly, the thirty-year limitation does not apply.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

James Z. Davis, Judge