

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070495-CA
v.)	
)	F I L E D
Norman E. Reed,)	(September 20, 2007)
)	
Defendant and Appellant.)	2007 UT App 311

Second District, Ogden Department, 901900022
The Honorable Stanton M. Taylor

Attorneys: Norman E. Reed, Draper, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

Appellant Norman E. Reed appeals the denial of a motion under rule 22(e) of the Utah Rules of Criminal Procedure seeking to correct an illegal sentence. This case is before the court on a sua sponte motion for summary disposition.

In 1991, the district court sentenced Reed on convictions of rape, a first degree felony, and forcible sexual abuse, a second degree felony. We affirmed the convictions. See State v. Reed, 839 P.2d 878, 880 (Utah Ct. App. 1992). Over a decade later, Reed filed a motion to correct his sentence under rule 22(e), alleging that his counsel was ineffective at sentencing and seeking a new sentencing hearing. The district court denied the motion, concluding that Reed had not demonstrated any prejudice resulting from counsel's allegedly deficient performance at sentencing.

The State correctly notes that a motion under rule 22(e) is limited to correcting sentences that are illegal or are imposed in an illegal manner. "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). "Therefore, issues concerning the validity of a conviction are not cognizable under

rule 22(e)." Id. Accordingly, "an appellate court may not review the legality of a sentence [under rule 22(e)] when the substance of the appeal is . . . a challenge, not to the sentence itself, but to the underlying conviction." State v. Finlayson, 2000 UT 10, ¶8, 994 P.2d 1243.

Although Reed characterizes his claims as challenges to a sentence imposed in an illegal manner, each claim either challenges the underlying conviction or relates to counsel's conduct unrelated to sentencing. Accordingly, the claims are not within the scope of a rule 22(e) motion. Similarly, Reed's claim in this appeal that counsel should have challenged the filing of multiple charges against him because the charges arose in a single criminal episode is not properly asserted under rule 22(e). Finally, the claim that he should have been tried before a jury is outside the scope of rule 22(e) because it also challenges the underlying conviction.

Assuming the validity of the convictions, as required by rule 22(e), the sentences imposed are within the statutory range, and Reed has not demonstrated that they were illegally imposed.

Affirmed.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge