

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD BERNARD CLAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43022

FILED

SEP 17 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Edward Clay's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 19, 2003, the district court convicted Clay, pursuant to a jury verdict, of one count each of burglary and robbery. The district court adjudicated Clay a habitual criminal and sentenced him to serve two concurrent terms of ten to twenty-five years in the Nevada State Prison. This court affirmed Clay's judgment of conviction and sentence on appeal.¹ The remittitur issued on June 8, 2004.

On January 20, 2004, Clay filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Clay filed a reply. On March 4, 2004, the district court denied Clay's motion. This appeal followed.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

¹Clay v. State, Docket No. 42271 (Order of Affirmance, May 11, 2004).

jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.² "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.'"³

In his motion, Clay contended that the district court was without jurisdiction to adjudicate him a habitual criminal. Specifically, Clay argued that the State did not follow the proper procedure in seeking habitual criminal treatment. We conclude that this claim is without merit. NRS 173.095(2) provides that, "[i]f an indictment is found charging a primary offense upon which a charge of habitual criminality may be based, the prosecuting attorney may file a notice of habitual criminality with the court." Here, a grand jury returned a two-count indictment against Clay on May 23, 2003. Prior to Clay's trial, the State filed a notice of its intent to seek habitual criminality pursuant to NRS 207.010. Because the State complied with the applicable statute, Clay failed to demonstrate that the district court was without jurisdiction to impose his sentence, or that his sentence was in excess of the statutory maximum.⁴ Consequently, the district court did not err in denying his motion.

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


³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁴See NRS 200.380; 205.060; 207.010.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Clay is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Edward Bernard Clay
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that Clay 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 Clay has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.