

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK STEVEN BLACKBURN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43716

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Mark Steven Blackburn's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On January 14, 1999, the district court convicted Blackburn, pursuant to a jury verdict, of burglary (Count I) and two counts of possession of stolen property (Counts II and III). The district court sentenced Blackburn to serve a term of 36 to 96 months in the Nevada State Prison for Count I and two terms of 24 to 60 months for Counts II and III, to run consecutively to Count I. The district court also sentenced Blackburn to pay restitution in the amount of \$800.00, for which he was held jointly and severally liable with his co-defendant. Finally, the district court sentenced Blackburn to pay restitution in the amount \$6,294.00, for which Blackburn was solely responsible. This court dismissed Blackburn's

appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on August 10, 1999.

On August 29, 2003, Blackburn filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 21, 2004, the district court denied Blackburn'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 jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.<sup>2</sup> "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.'"<sup>3</sup>

In his motion, Blackburn contended that the \$6,294.00 in restitution the district court ordered him to pay was illegal because he was never charged with or convicted of burglarizing the victims to whom restitution was to be made. Although not charged with or convicted of burglarizing the victims at issue, Blackburn's conviction for feloniously

---

<sup>1</sup>Blackburn v. State, Docket No. 33686 (Order Dismissing Appeal, July 14, 1999).

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

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

possessing their property required that restitution be imposed, and the district court did so.<sup>4</sup> Accordingly, we conclude that Blackburn's sentence was not facially illegal.

Moreover, Blackburn failed to object to the order of restitution at his sentencing hearing and failed to raise any error concerning restitution in his direct appeal. Therefore, we conclude Blackburn waived this issue.<sup>5</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Blackburn is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

---

<sup>4</sup>See NRS 205.275(3).

<sup>5</sup>See Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Brent T. Adams, District Judge  
Mark Steven Blackburn  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk