

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY O. GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43807

**FILED**

JAN 25 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On September 19, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping and two counts of robbery with the use of a deadly weapon in district court case number C179918. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after five years for kidnapping and two consecutive terms of thirty-six to one hundred and twenty months for each robbery count. The district court imposed the terms to run concurrently between the counts. No direct appeal was taken.

On June 21, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 15, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the kidnapping was incidental to robbery, and thus, he should not have been convicted of

kidnapping.<sup>1</sup> Appellant claimed that any movement of the victim was incidental to the robbery, he never restrained the victim, he never increased the risk of harm to the victim, and there was no independent purpose.

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>

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentences were facially legal, and there is no indication that the district court was without jurisdiction.<sup>4</sup> Appellant's conviction for kidnapping was based upon a

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<sup>1</sup>Davis v. State, 110 Nev. 1107, 1114, 881 P.2d 657, 662 (1994)(holding that "where kidnapping is incidental to another crime, the evidence of kidnapping must include an element of asportation, physical restraint, or restraint which either increases the risk of harm to the victim or has an independent purpose and significance."); Wright v. State, 94 Nev. 415, 417, 581 P.2d 442, 443 (1978)(holding that a separate conviction for kidnapping will not lie if "the movement of the victim is incidental to the robbery and does not substantially increase the risk of harm over and above that necessarily present in the crime of robbery itself.").

<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)).

<sup>4</sup>NRS 200.320; NRS 200.380; NRS 193.165.

guilty plea. Thus, appellant essentially challenged the validity of his guilty plea. Such a challenge is not permissible in a motion to correct an illegal sentence.<sup>5</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant 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, C.J.  
Becker

Rose J.  
Rose

Hardesty J.  
Hardesty

cc: Hon. Sally L. Loehrer, District Judge  
Jeffrey O. Green  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>Edwards, 112 Nev. at 708, 918 P.2d at 324.

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