

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46290

FILED

FEB 17 2006

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 appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On September 16, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of coercion (sexually motivated). The district court sentenced appellant to serve two consecutive terms of twenty-four to seventy-two months in the Nevada State Prison. The district court also imposed a special sentence of lifetime supervision. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On August 25, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court denied the petition. On appeal, this court affirmed the denial of the petition, but remanded for the limited purpose of entering an amended judgment of

¹Miller v. State, Docket No. 42473 (Order Dismissing Appeal, January 28, 2004).

conviction removing the special sentence of lifetime supervision.² On July 20, 2005, the district court entered an amended judgment of conviction, in compliance with this court's order.

On September 27, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On October 27, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his original sentence was constitutionally defective and, therefore, the district court lacked subject matter jurisdiction to sentence him.

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence in the amended judgment of conviction was facially legal.⁵ Further, there is no

²Miller v. State, Docket No. 44666 (Order of Affirmance and Remand for Entry of an Amended Judgment of Conviction, June 16, 2005).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

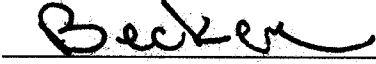
⁵See NRS 207.190(2)(a).

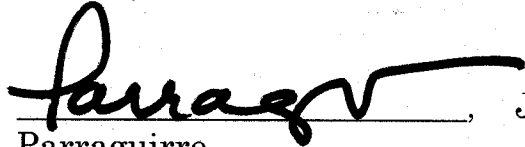
indication that the district court was without jurisdiction to sentence appellant in the instant case. Accordingly, we conclude that the district court did not err in denying appellant's motion.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Michael A. Miller
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).