

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY W. BURNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46460

FILED

MAR 31 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to vacate and/or correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 1, 1983, the district court convicted appellant, pursuant to a guilty plea, of murder in the first degree with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant did not file a direct appeal.

On November 16, 2005, appellant filed a proper person motion to vacate and/or correct an illegal sentence. On December 6, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was facially illegal because he was 17-years-old at the time he committed his crime, he had a low I.Q., and the district court's discussion of commuting his sentences gave him the impression that he would be eligible for parole. Additionally, appellant contended that the district court was without jurisdiction because the indictment was defective. Specifically, appellant

claimed that the district court improperly sentenced him to first-degree murder when the grand jury only indicted him for open murder.

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.¹ "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."²

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal.³ There was no indication that the district court was without jurisdiction to impose a sentence upon appellant. Appellant may not challenge the validity of his guilty plea in a motion to correct an illegal sentence. An indictment for open murder is sufficient to support a verdict of first-degree or second-degree murder.⁴ Thus, we affirm the order of the district court.

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

³1977 Nev. Stat., ch. 430, § 82, at 864-65 (NRS 200.030).

⁴State v. Munios, 44 Nev. 353, 195 Pac. 806 (1921).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Anthony W. Burns
Attorney General George Chanos/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).