

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY GENE TILCOCK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47214

**FILED**

JUL 28 2006

MANETTA M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Michelle Leavitt, Judge.

On August 28, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of eight to twenty years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on April 14, 1999.

On March 28, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 20, 2006, the district court denied appellant's motion. This appeal followed.

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<sup>1</sup>Tilcock v. State, Docket No. 32881 (Order Dismissing Appeal, March 19, 1999).

In his motion, appellant claimed that his habitual criminal adjudication violated Apprendi v. New Jersey<sup>2</sup> because the issue of whether he should be adjudicated a habitual criminal was not presented to the jury.

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>3</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>4</sup> A motion to correct an illegal sentence may not be used to correct alleged errors occurring at sentencing.<sup>5</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.<sup>6</sup> Further, there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. A claim that the district court allegedly exceeded its authority at sentencing, or violated appellant's due process rights, is

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<sup>2</sup>530 U.S. 466 (2000).

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

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

<sup>5</sup>Id.

<sup>6</sup>See NRS 207.010(1)(a) (setting forth a penalty of not less than five years nor more than twenty years for small habitual criminal treatment).

not appropriately raised in a motion to correct an illegal sentence. Finally, we note that appellant's reliance upon Apprendi is misplaced as it would not apply retroactively to appellant's conviction.<sup>7</sup> Therefore, we affirm the order of the district court.

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

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<sup>7</sup>See Colwell v. State, 118 Nev. 807, 816-22, 59 P.3d 463, 469-73 (2002) (discussing retroactive application of new rules of criminal procedure and determining that where new rule required fact-finding by a jury the new rule did not suggest the accuracy of the proceedings was diminished where a three-judge panel determined the facts, but rather the new rule emphasized the right to a jury trial); United States v. Sanchez-Cervantes, 282 F.3d 664, 669-71 (9th Cir. 2002) (holding that the new rule of criminal procedure announced in Apprendi does not apply retroactively).

<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michelle Leavitt, District Judge  
Larry Gene Tilcock  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk