

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MAURICE FULTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47394

FILED

AUG 09 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Wade*
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; Sally L. Loehrer, Judge.

On April 22, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree kidnapping with the use of a deadly weapon and four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve eight consecutive terms of fifteen years in prison for the robbery charges and two consecutive terms of seventy-five years in prison for the kidnapping charge. The district court further ordered that all of the sentences be served consecutively. Appellant filed an untimely notice of appeal, which this court dismissed for lack of jurisdiction.¹

On April 5, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Fultz v. State, Docket No. 29608 (Order Dismissing Appeal, December 31, 1996).

motion. On May 10, 2006, the district court denied appellant'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.² "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.'"³

In his motion, appellant contended that the district court's failure to follow the procedures outlined in NRS 178.405 and NRS 178.415 deprived it of jurisdiction to sentence him. We disagree. Even if the district court had failed to follow procedures, it would not deprive the court of jurisdiction. The proper avenue for relief would be a petition for a writ of habeas corpus challenging the legality of confinement, not a motion to correct an illegal sentence.⁴

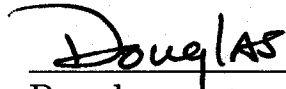
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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

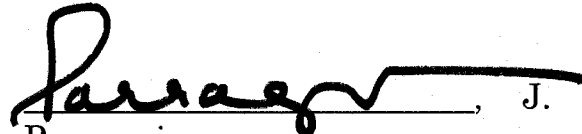
⁴We make no determination as to whether such a petition would be successful in appellant's case. In fact, such a petition by appellant would likely be procedurally barred. See NRS 34.726; NRS 34.800.

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.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge
Michael Maurice Fultz
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).