

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY MATTHEW DOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47648

FILED

FEB 16 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from the order of the district court denying appellant Jerry Matthew Dow's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

The district court convicted Dow, pursuant to a jury verdict, of one count of possession of a stolen vehicle, two counts of possession of a controlled substance, and one count of possession of tools commonly used for the commission of a burglary. The district court adjudicated Dow a habitual criminal and sentenced him to serve a prison term of 10 to 25 years for the stolen vehicle count, concurrent prison terms of 5 years for the controlled substance counts, and a concurrent jail term of 1 year for the burglary tool count. We dismissed Dow's untimely direct appeal.¹ Thereafter, Dow filed a motion to correct an illegal sentence. The State

¹Dow v. State, Docket No. 32267 (Order Dismissing Appeal, June 2, 1998).

opposed the motion and, after a brief hearing, the district court denied the motion. This appeal follows.

Dow contends that the district court erred in concluding that challenges to the constitutional validity of NRS 207.010, the habitual offender statute, are not properly raised in a motion to correct an illegal sentence. Dow claims that NRS 207.010 violates his Sixth Amendment right to jury trial, his due process right to have the State prove its case beyond a reasonable doubt, and the separation of powers doctrine by encroaching on the jury's fact finding function.²

A motion to correct an illegal sentence may only challenge the facial legality of the sentence, alleging that either the district court was without jurisdiction to impose a sentence or that the sentence imposed was in excess of the statutory maximum.³ Here, the district court had jurisdiction to sentence Dow for his felony and gross misdemeanor convictions,⁴ and the sentences that it imposed did not exceed the

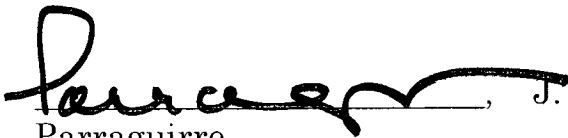
²Dow cites to United States v. Booker, 543 U.S. 220 (2005); Blakely v. Washington, 542 U.S. 296 (2004); Apprendi v. New Jersey, 530 U.S. 466 (2000).

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

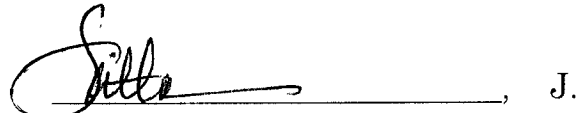
⁴See Nev. Const. art. 6, § 6; Kimball v. State, 100 Nev. 190, 191, 678 P.2d 675, 676 (1984) (stating that "[t]he original jurisdiction of the district court is in fact limited to felonies and gross misdemeanors").

statutory maximum.⁵ Accordingly, the district court did not err in denying Dow's motion to correct an illegal sentence, and we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Steven R. Kosach, District Judge
Karla K. Butko
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵See NRS 193.140 (a gross misdemeanor is punishable by a jail term of not more than 1 year); NRS 205.080(1) (possession of burglary tools is a gross misdemeanor); NRS 207.010(1) (prescribing the punishments for habitual criminals, which range from a minimum of 5 years imprisonment to a maximum of life imprisonment without the possibility of parole).