

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD JEFFREY MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48562

**FILED**

MAY 10 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *JMB*  
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 July 30, 2003, the district court convicted appellant, pursuant to a plea of guilty, of one count of burglary. The district court sentenced appellant as a habitual criminal pursuant to NRS 207.010(1)(a) to serve a term of 60 to 180 months in the Nevada State Prison. Appellant did not appeal his conviction.

On November 8, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 5, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because the issue of habitual criminality was decided by the district court and not presented to a jury. Appellant relied upon Apprendi v. New

Jersey<sup>1</sup> and its progeny, as well as what he believed was going to be decided in O'Neill v. State,<sup>2</sup> a case not decided at the filing of his motion.

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>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant failed to demonstrate that his sentence was facially illegal or that the district court was without jurisdiction to sentence him in the instant case.<sup>5</sup> Moreover, as a separate and

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<sup>1</sup>530 U.S. 466 (2000).

<sup>2</sup>122 Nev. \_\_\_, 153 P.3d 38 (2007).

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

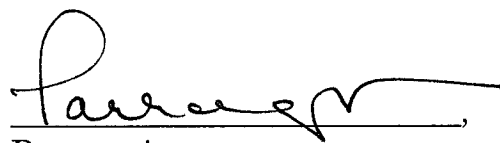
<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

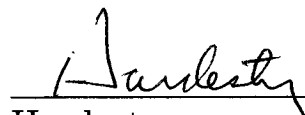
<sup>5</sup>See NRS 207.010(1)(a).

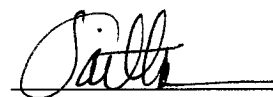
independent ground to deny relief, appellant's claim lacked merit.<sup>6</sup> Therefore, we affirm the order of the district court.

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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

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<sup>6</sup>See O'Neill, 122 Nev. at \_\_\_, 153 P.3d at 43 (holding that the issue of habitual criminality may be decided by the district court and recognized that the discretion invested in the district court by statute is the discretion to dismiss a count, which does not increase the penalty).

<sup>7</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge  
Todd Jeffrey Miller  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk