

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNIE PASCHAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48604

FILED

MAY 31 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On September 11, 2003, the district court convicted appellant, pursuant to a guilty plea, of escape. The district court sentenced appellant as a habitual criminal to a term of twenty years, with parole eligibility after five years, in the Nevada State Prison. Appellant did not file a direct appeal.

On May 25, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On November 30, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his sentence as a habitual criminal violated Apprendi v. New Jersey¹ because the issue of whether he should be sentenced as a habitual criminal was not presented

¹530 U.S. 466 (2000).

to the jury and required judicial fact-finding beyond the existence of prior felony convictions.

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

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.⁴ 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 not appropriately raised in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

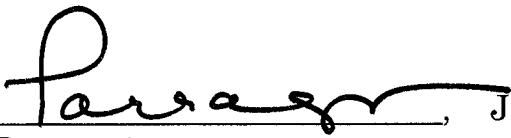
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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


⁴See 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).

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.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Jerome Polaha, District Judge
Ronnie Paschal
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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