

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY SALVALZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51263

FILED

AUG 25 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Lee A. Gates, Judge.

On March 17, 2006, the district court convicted appellant Jeffrey Salvalzo, pursuant to an Alford plea¹, of extortionate collection of debt, attempted mayhem, and carrying a concealed firearm or other deadly weapon. The district court sentenced appellant to serve concurrent terms of 28 to 72 months for extortionate collection of debt, 24 to 60 months for attempted mayhem, and 24 to 60 months for carrying a concealed firearm or other deadly weapon in the Nevada State Prison. No direct appeal was taken.

On January 30, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 27, 2008, the district court denied appellant's motion. This appeal followed.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

In his motion, appellant contended that the district court was without jurisdiction to convict and sentence him for the attempted mayhem charge because a grand jury had issued a no true bill regarding that charge. Appellant claimed that the grand jury's return of a no true bill means he was not properly indicted for the attempted mayhem charge at the time of his guilty plea. Appellant claimed that the district court, therefore, did not have jurisdiction to accept his plea and sentence him for the attempted mayhem charge.

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

Our review of the record on appeal reveals that the district court did not err in denying appellant's claim. Appellant's sentence was facially legal.⁴ Further, appellant may not challenge the validity of his guilty plea on the attempted mayhem count on a motion to correct an illegal sentence.⁵ Appellant failed to demonstrate that 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 200.280 and NRS 193.330.

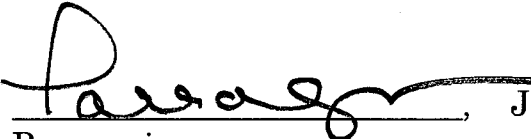
⁵Edwards, 112 Nev. at 708, 918 P2d. at 324.

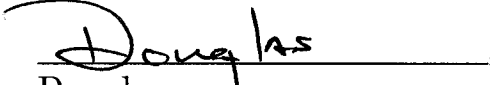
was not a court of competent jurisdiction. On November 30, 2005, the State filed an amended indictment, which charged appellant with attempted mayhem. At the plea canvass, also held on November 30, 2005, the district court read the charges in the amended indictment to appellant and asked appellant if he had read the charges himself. Appellant stated that he had. Therefore, we conclude that the district court did not err in denying appellant's claim.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Jeffrey Salvalzo
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).