

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN YEATS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52128

**FILED**

FEB 11 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Gary Lynn Yeats' motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On January 29, 2001, Yeats was convicted, pursuant to a jury verdict, of one count of burglary. The district court adjudicated Yeats as a habitual criminal and sentenced him to serve a prison term of 10-25 years to run consecutively to the sentence imposed in an unrelated district court case. This court affirmed the judgment of conviction and sentence on direct appeal. Yeats v. State, Docket No. 37395 (Order of Affirmance, June 12, 2001). Yeats subsequently filed post-conviction petitions for writs of habeas corpus in 2001 and 2005 in the district court. Both petitions were rejected by the district court and, on appeal, this court affirmed the district court's orders. Yeats v. State, Docket No. 39362 (Order of Affirmance, July 25, 2002); Yeats v. State, Docket No. 46620 (Order of Affirmance, May 19, 2006).

On June 28, 2007, Yeats filed a proper person motion to correct an illegal sentence in the district court. The district court appointed counsel to represent Yeats and counsel filed a supplement to the

motion. The State opposed the motion. The district court did not conduct an evidentiary hearing and, on June 27, 2008, entered an order denying Yeats' motion. This timely appeal followed.

Yeats contends that the district court erred by denying his motion to correct an illegal sentence. Specifically, Yeats claims that the district court abused its discretion by (1) adjudicating him as a habitual criminal, and (2) denying his motion without conducting an evidentiary hearing or "reaching the merits of the issues." We disagree.

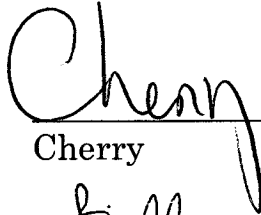
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion 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.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). "[S]uch a motion cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Id.

We conclude that the district court properly found that the arguments raised by Yeats fell outside the scope of issues permissible in a motion to correct an illegal sentence. In his motion below and again on appeal, Yeats claims the district court abused its discretion by failing to dismiss the habitual criminal count, a challenge which should have been raised in his direct appeal. Yeats' sentence was facially legal, and there is no indication that the district court was without jurisdiction. See NRS

207.010(1)(b)(3); NRS 207.010(2). Therefore, we conclude that the district court did not err by denying Yeats' motion to correct an illegal sentence.

Having considered Yeats' contention and concluded that it is without merit, we


ORDER the judgment of the district court AFFIRMED.

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

Cherry

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

Saitta

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

Gibbons

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