

IN THE SUPREME COURT OF THE STATE OF NEVADA

JORDAN KEITH TILCOCK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52479

FILED

JUN 26 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Anderson*  
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. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On October 3, 2002, the district court convicted appellant, pursuant to a guilty plea, of unlawful manufacture of a controlled substance and ex-felon in possession of a firearm. The district court sentenced appellant to serve a term in the Nevada State Prison of 36 to 120 months for unlawful manufacture of a controlled substance and a concurrent term of 12 to 48 months for ex-felon in possession of a firearm. No direct appeal was taken.

On October 17, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed post-conviction counsel. On March 25, 2004, appellant filed a notice that he voluntarily withdrew the petition for a writ of habeas corpus from consideration.

On June 19, 2008, appellant filed a motion to correct an illegal sentence. On September 12, 2008, the district court denied the motion. This appeal followed.

Appellant claimed that the district was without jurisdiction to impose a sentence on the unlawful manufacture of a controlled substance charge because NRS 453.091, which defined the term “manufacture,” did not take effect until October 1, 2001, and he was arrested on September 4, 2001.

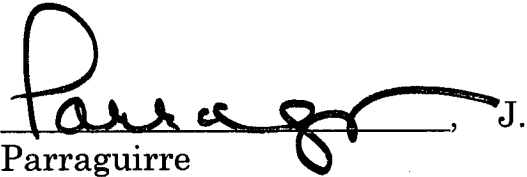
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “A motion 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)).

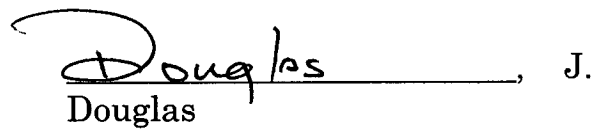
Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant’s motion. Appellant’s sentence was facially legal. See NRS 453.322; NRS 202.360. At the time of his arrest, the definition of manufacturing was codified and in effect under NRS 453.091. 1995 Nev. Stat., ch. 516, § 12, at 1717. Thus, appellant failed to demonstrate that the district court was without jurisdiction to impose sentence in this case. To the extent that appellant claimed that the facts of the crime did not meet the statutory definition of unlawful manufacturing of a controlled substance, this claim fell outside of the scope of the claims permissible in a motion to correct an illegal sentence. 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

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