

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PAUL WARREN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35439

FILED

MAR 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

In January 1997, appellant Michael Paul Warren was convicted, pursuant to a guilty plea, of one count of aggravated stalking. Warren did not pursue a direct appeal. On July 15, 1997, Warren filed a post-conviction petition for a writ of habeas corpus. Following an evidentiary hearing, the district court denied the petition. This court dismissed Warren's subsequent appeal. Warren v. State, Docket No. 31617 (Order Dismissing Appeal, September 21, 1998).

On June 16, 1999, Warren filed in the district court a motion to correct an illegal sentence. Warren alleged that the aggravated stalking statute, NRS 200.575(2)(a), was unconstitutional because (1) it revised or amended the assault statute, NRS 200.471, in violation of Article 4, Section 17 of the Nevada Constitution; and (2) it violated the Equal

Protection Clause of the United States Constitution by punishing as a felony conduct that constituted misdemeanor assault under NRS 200.471(2)(a). The district court summarily denied the motion pursuant to *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). This timely appeal followed.

Warren argues that the district court erred by summarily denying the motion pursuant to Edwards. We disagree.


As we explained in Edwards, a motion to correct an illegal sentence addresses "only the facial legality of a sentence." 112 Nev. at 708, 918 P.2d at 324. An illegal sentence is one that is not consistent with the controlling sentencing statute or is illegal in the sense that the court went beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum. Id. A motion to correct an illegal sentence "'presupposes a valid conviction'" and, therefore, it 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. This court has instructed district courts that "[i]f a motion to correct an illegal sentence . . . raises issues outside of the very narrow scope of the inherent authority recognized in this Opinion, the motion should be summarily denied." Id. at 709 n.2, 918 P.2d at 325 n.2.


Having reviewed Warren's motion and considered his arguments on appeal, we conclude that the motion filed in


district court raises issues outside the very narrow scope of the court's authority to correct an illegal sentence recognized in Edwards. Accordingly, we conclude that the district court did not err by summarily denying the motion.¹

We therefore

ORDER this appeal dismissed.²


Maupin J.


Shearing J.


Becker J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Richard F. Cornell
Washoe County Clerk

¹We decline Warren's invitation to treat the motion as a post-conviction petition for a writ of habeas corpus. If Warren wishes to file such a petition, he must do so in the district court. We express no opinion as to whether Warren would be able to overcome with the procedural bars set forth in NRS Chapter 34.

²We note that the fast track statement filed by Warren's counsel, Richard F. Cornell, contains a statement of facts that is devoid of any citations to transcripts or an appendix. See NRAP 3C(e)(2); NRAP 28(e). Failure to comply with the Rules of Appellate Procedure in the future may subject counsel to sanctions. See NRAP 3C(n).