

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARSHALL J. ANTHONY,

No. 36104

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

OCT 09 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On July 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve two consecutive terms of forty-eight (48) to one hundred and twenty (120) months, in the Nevada State Prison. Appellant did not file a direct appeal.

On February 28, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 20, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his burglary convictions were inappropriate because his conduct amounted to a violation of a lesser offense. He also appeared to suggest that his attorney did not advise him of his right to a direct appeal.

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 that the sentence was imposed in excess of the statutory maximum.<sup>1</sup> "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to

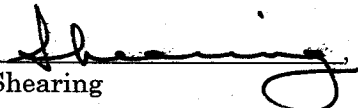
<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

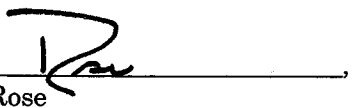
challenge alleged errors in proceedings that occur prior to the imposition of sentence."<sup>2</sup>

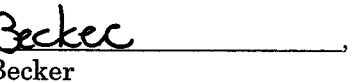
Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's challenge to his burglary convictions fell outside of the very narrow scope of claims permissible in a motion to correct an illegal sentence because this claim attacked the validity of the judgment of conviction. Similarly, appellant's contention that his attorney may not have advised him of the availability of a direct appeal is beyond the scope of claims cognizable in a motion to correct an illegal sentence. Where a motion to correct an illegal sentence raises issues outside of the very narrow scope of the court's inherent authority to hear such a motion, the motion must be summarily denied.<sup>3</sup> To the extent that appellant challenged the validity of his guilty plea, or argued ineffective assistance of counsel, these claims are properly pursued in a post-conviction petition for a writ of habeas corpus in the district court.<sup>4</sup>

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
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Shearing J.

  
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Rose J.

  
\_\_\_\_\_  
Becker J.

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<sup>2</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>3</sup>Id. at 709, n.2, 918 P.2d at 325, n.2.

<sup>4</sup>Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. Janet J. Berry, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Marshall J. Anthony  
Washoe County Clerk