

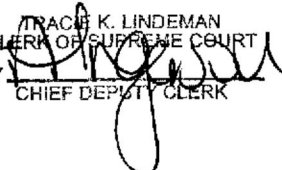
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIO HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67243

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In his motion filed on October 21, 2014, appellant Julio Herrera claimed the district court lacked jurisdiction to impose his sentence because he did not waive his statutory right to a separate penalty hearing and agree to have his sentence imposed by the trial judge as is required by NRS 175.552(2). However, we conclude Herrera's claim did not implicate the jurisdiction of district court, *see Nev. Const. art 6, § 6*, and, therefore, fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence, *see Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

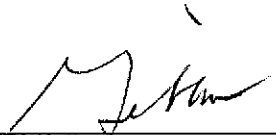
Moreover, at the time of Herrera's sentencing, NRS 175.552 did not require the parties to stipulate to waiver of a separate penalty


¹This appeal has been submitted for decision without oral argument, *see NRAP 34(f)(3)*, and we conclude the record is sufficient for our review and briefing is unwarranted, *see Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

hearing and agreement to have the sentence imposed by the trial judge, see 1977 Nev. Stat., ch. 585, § 7, at 1543, and the Nevada Supreme Court decisions construing this earlier statute held a separate penalty hearing was only required when the death penalty was a sentencing option. *Kazalyn v. State*, 108 Nev. 67, 77, 825 P.2d 578, 584 (1992), *receded from by Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713-14 (2000); *McCabe v. State*, 98 Nev. 604, 607, 655 P.2d 536, 538 (1982). The record reveals the death penalty was not a sentencing option in Herrera's case.

We conclude the district court did not err by denying Herrera's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. David B. Barker, District Judge
Julio Herrera
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk