

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK A. BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36452

**FILED**

**MAR 23 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 10, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of trafficking in a controlled substance and one count of conspiracy to commit trafficking in a controlled substance. The district court sentenced appellant to serve a term of 24 to 72 months for the trafficking count and a consecutive term of 20 to 60 months for the conspiracy count in the Nevada State Prison. Appellant did not file a direct appeal.

In his motion, appellant contends that the sentencing court exceeded its authority by sentencing appellant on both the conspiracy count and the trafficking count because the two crimes should merge.

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

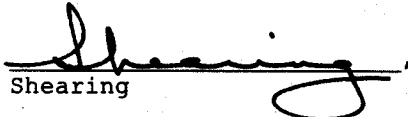
<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

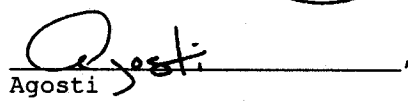
to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"<sup>2</sup>


Appellant is challenging the legality of being convicted for both conspiracy to commit trafficking and committing the trafficking. This is not a challenge to the facial legality of the sentence imposed. The district court properly sentenced appellant under the relevant statutes.<sup>3</sup> Thus, appellant's claim falls outside the narrow scope of a motion to correct an illegal sentence and the district court did not err in denying appellant's motion.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing J.

  
Agosti J.

  
Rose J.

cc: Hon. David A. Huff, District Judge  
Attorney General  
Churchill County District Attorney  
Rick Lawton  
Churchill County Clerk

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

<sup>3</sup>See NRS 453.401; NRS 453.3385(1); NRS 193.130(2).