

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRICK AVERY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70419

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Derrick Avery appeals from a district court order denying his “motion to correct and/or void judgment of sentence as nullity at law.”¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

In his motion filed on December 8, 2015, Avery claimed the district court erred, the prosecutor committed misconduct, and defense counsel was ineffective for failing to ensure he received credit for time spent in federal custody as was required by the terms of the plea agreement.

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 district court may summarily deny a motion to correct

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


17-900523


an illegal sentence if it raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

Without considering the merits of Avery's claims, we conclude they fall outside the narrow scope of claims permissible in a motion to correct an illegal sentence and, therefore, the district court did not err by denying his motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Derrick Avery
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk