

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72407

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Charles Matthew Wirth appeals from a district court order summarily denying his motions to correct an illegal sentence.¹ Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

In his motions, Wirth claimed the district court lacked jurisdiction to sentence him because there was no probable cause hearing and the State amended the attempted-sexual-assault charge after the preliminary hearing. Wirth further claimed his sentence for second offense open or gross lewdness was illegal because he did not have a first-offense open-or-gross-lewdness conviction. And Wirth argued the district court should grant his motions because they were unopposed by the State and should be construed as meritorious pursuant to D.C.R. 13(3).

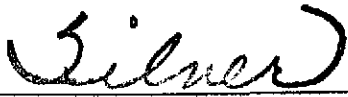
A motion to correct an illegal sentence “presupposes a valid conviction” and may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *Edwards v.*


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)). A district court may summarily deny a motion to correct an illegal sentence if it raises issues that fall outside the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

Wirth's claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence because they did not implicate the jurisdiction of the district court, *see* Nev. Const. art 6, § 6; NRS 171.010, and his sentences are facially legal, *see* NRS 193.130(2)(d); NRS 193.140; NRS 193.330(1)(a); NRS 200.366(3); NRS 201.210(1). Accordingly, the district court did not err by summarily denying his motions, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²To the extent Wirth appeals from the denial of his motions to dismiss for lack of jurisdiction, recuse District Judge Kimberly Wanker, and disqualify the Nye County District Attorney's Office and Chief Deputy District Attorney Kirk Vitto, we conclude we lack jurisdiction to consider his appeals. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (observing the right to appeal is statutory, and, where no statutory authority provides for appeal, there is no right to appeal).

We further conclude Wirth's challenges to the denial of his postconviction petition for a writ of habeas corpus are not properly raised in this appeal

cc: Hon. Kimberly A. Wanker, District Judge
Charles Matthew Wirth
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk