

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AVERY ALLEN CHURCH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75491-COA

FILED

FEB 15 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Avery Allen Church, Jr., appeals from an order of the district court denying a “motion to correct an illegal sentence and/or motion to recall a constitutionally infirm judgment of conviction” filed on February 5, 2018.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In his motion, Church claimed his sentence was illegal and his conviction should be overturned because the district court lacked jurisdiction to hear the case. Specifically, he claimed the Nevada Supreme Court reversed his previous judgment of conviction but did not remand it. Therefore, the State was required to re-indict him rather than filing an amended information. Church’s claims 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).


Motions to correct an illegal sentence can only challenge the facial legality of a sentence. *See id.* “A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge

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

alleged errors in proceedings that occur prior to the imposition of sentence.”
Id. (internal quotation marks omitted). Because Church’s motion challenged errors in the proceedings occurring prior to sentencing, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Avery Allen Church, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk