

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HECTOR CASTELLON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75846-COA

FILED

APR 18 2019

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

ORDER OF AFFIRMANCE

Hector Castellon appeals from an order of the district court denying a motion to modify and/or correct illegal sentence, filed on March 29, 2018.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Castellon claimed the district court lacked jurisdiction to sentence him, rendering his sentence illegal. Specifically, Castellon claimed that, at the time of his conviction, NRS 175.552 required his sentence be determined by, and after a penalty hearing before, either the jury that convicted him or a three-judge panel. Instead, noted Castellon, he was sentenced by the trial judge without the penalty hearing.

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). The version of NRS 175.552 that was in effect at the time of

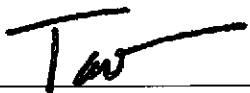
¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

Castellon's 1984 conviction required a separate penalty hearing only when the death penalty was a sentencing option. *See Kazalyn v. State*, 108 Nev. 67, 77, 825 P.2d 578, 584 (1992), *receded from by Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000); *McCabe v. State*, 98 Nev. 604, 607, 655 P.2d 536, 538 (1982). The record before this court shows that the death penalty was not a sentencing option in Castellon's case. Accordingly, the district court was not without jurisdiction to impose sentence. Castellon did not contend his sentence was imposed in excess of the statutory maximum. And his claims fell outside the narrow scope of claims permissible in a motion to modify a sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324.

For the foregoing reasons, we conclude the district court did not err by denying Castellon's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Hector Castellon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk