

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON EVAN BROWNE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69656

FILED

DEC 28 2016

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

*ORDER OF AFFIRMANCE*

Appellant Jason Evan Browne appeals from a district court order denying his motion to correct an illegal sentence filed on December 21, 2015.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Browne claims the district court erred by denying his motion to correct an illegal sentence and by doing so in a summary order. He asserts a provision he agreed to in his sentencing agreement in which he waived any right to seek commutation of his sentence from the Pardons Board is illegal because a similar provision in NRS 213.085(1) has been declared unconstitutional when applied retroactively, *see Miller v. Warden*, 112 Nev. 930, 921 P.2d 882 (1996). He further asserts application of this provision is an ex post facto violation and the provision constitutes an illegal upward departure of the sentence imposed, a

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

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violation of the federal “reasonableness” standard, an abuse of discretion, and an “impermissible factor.”

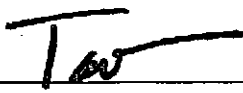
Browne was convicted of first-degree murder and sentenced to life without the possibility of parole for the homicide he committed in 1993. *See* 1989 Nev. Stat., ch. 631, § 1, at 1451. Browne’s challenge to the provision in his sentencing agreement waiving his right to seek commutation of his sentence was not a challenge to the facial legality of his sentence of life without the possibility of parole and, thus, this claim fell outside the 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) (A motion to correct an illegal sentence may address only 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.). Therefore, we conclude the district court did not err by summarily denying his motion to correct an illegal sentence. *See id.* at 708 n.2, 918 P.2d at 325 n.2.


Browne also claims the district court abused its discretion by denying his motion for the appointment of counsel and an evidentiary hearing and a motion requesting transcripts. Because Browne’s claim fell outside the scope of permissible claims in a motion to correct an illegal

sentence, we conclude the district court did not abuse its discretion by denying these motions.<sup>2</sup>

Having concluded Browne's claims lack merit, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Susan Johnson, District Judge  
Jason Evan Browne  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>To the extent Browne attempts to present claims or facts in his brief which were not previously presented in the proceedings below, we decline to consider them in the first instance.