

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THAD MONOLETTI AUBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76134-COA

FILED

SEP 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Thad Monoletti Aubert appeals from a district court order denying a motion to correct an illegal sentence filed on February 6, 2018. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Aubert claims the district court erred by denying his motion because the district court did not have jurisdiction to impose his sentence. To this end, Aubert argues the district court lacked jurisdiction to sentence him under the habitual criminal statutes because the State filed a notice seeking habitual criminal treatment instead of an amended information alleging the count of habitual criminality as required by NRS 207.012(2).


NRS 176.555 states a district "court may correct an illegal sentence at any time." 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*, 122 Nev. 704, 708, 918 P.2d 321, 324 (1996). The Nevada Supreme Court has determined that district courts lack jurisdiction to sentence defendants under the habitual criminal statutes when the State fails to formally file notices of habitual criminality. *Grey v. State*, 124 Nev. 110, 124, 178 P.3d 154, 163-64 (2008);

Crutcher v. Eighth Judicial Dist. Court, 111 Nev. 1286, 1289, 903 P.2d 823, 825 (1995).

The record demonstrates that on November 24, 2009, more than a year before Aubert was sentenced, the State filed a notice in the district court that it intended to seek habitual criminal treatment. Based on this record, we conclude Aubert has failed to demonstrate the district court lacked jurisdiction to sentence him under the habitual criminal statutes. See NRS 207.016(2) (2007) (“A count pursuant to NRS 207.010, 207.012, or 207.014 may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed, or the hearing required by subsection 3 held, until 15 days after the separate filing.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kenneth C. Cory, District Judge
Jean J. Schwartzner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk