

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVINE D. BATTLE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81176-COA

**FILED**

**DEC 18 2020**

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

*ORDER OF AFFIRMANCE*

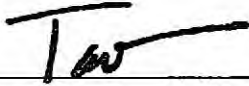
Evine D. Battle appeals from a district court order denying a motion to modify and/or correct an illegal sentence filed on February 20, 2020. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Battle claimed that his sentence for carrying a concealed firearm without a permit in violation of NRS 202.350(1)(d)(3) was illegal because this was his first offense for carrying a concealed firearm without a permit and first offenses are supposed to be punished as gross misdemeanors pursuant to NRS 202.350(2)(a)(1).

NRS 176.555 states a district “court may correct an illegal sentence at any time.” A motion to correct an illegal sentence, however, 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). “A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.” *Id.* (internal quotation marks omitted).

Battle's motion did not implicate the jurisdiction of the district court, *see* Nev. Const. art. 6, § 6(1); NRS 171.010, and his 24- to 60-month prison sentence is facially legal, *see* NRS 193.130(2)(c); NRS 202.350(1)(d)(3); NRS 202.350(2)(b). Therefore, we conclude the district court did not err by denying his motion, and we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Douglas W. Herndon, District Judge  
Evine D. Battle  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>1</sup>We note the plain language of NRS 202.350(2)(a) excludes offenses committed in violation of NRS 202.350(1)(d)(3) (carrying a concealed firearm without a permit) from being punished as gross misdemeanors, and we deny Battle's request for an evidentiary hearing.

We deny Battle's "[m]otion to stay the proceedings and or to continue his case for the next six months."