

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD THOMAS JOHNSTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80924-COA

**FILED**

MAR 05 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Richard Thomas Johnston appeals from an order of the district court denying a motion to correct illegal sentence. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Johnston argues the district court erred by denying his November 25, 2019, motion. 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).

In his motion, Johnston claimed his sentence was facially illegal because the sentencing court improperly imposed sentence for the six counts of sexual assault of a child under the age of 14 based upon the 1995 version of NRS 200.366. See 1995 Nev. Stat., ch. 443, § 58, at 1186-87. Johnston asserted the information alleged that each count occurred over a span of time that straddled the effective date of the 1995 version of NRS 200.366. He also asserted that the information recited the wording from the earlier version and that the victim testified that some of the sexual

abuse occurred before the effective date of the 1995 version. For those reasons, Johnston asserted that he should have been sentenced pursuant to the prior version of NRS 200.366, *see* 1991 Nev. Stat., ch. 250, § 1, at 612-13, because the 1995 revisions to that statute were not effective when he committed the offenses.

Johnston's reliance on what was contained in the information as evidence was misplaced. The State was not required to allege the exact dates in this matter because time was not an element of the charged crimes; instead the State properly provided "approximate dates on which it is believed that the crime[s] occurred." *Wilson v. State*, 121 Nev. 345, 368-69, 114 P.3d 285, 301 (2005); *see also Cunningham v. State*, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984) (explaining that time is not an essential element of the crime of sexual assault of a child). Therefore, the dates contained within the information did not establish the dates upon which Johnston committed the offenses. And because the State was free to allege a range of dates, we are not prepared to assign unwarranted import to the State's decision to describe the crime using the most limiting age restriction where, as here, the range of dates covered three versions of the statute, each with different age limitations.<sup>1</sup>

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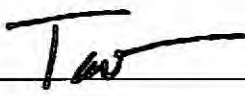
<sup>1</sup>The information alleged the sexual assaults occurred from January 1995 until December 1997. The 1991 version of the statute provided a specific penalty where the victim was under the age of 14 years. *See* 1991 Nev. Stat., ch. 250, § 1, at 613. The statute was amended in 1995 and raised the victim's age to 16 years. *See* 1995 Nev. Stat., ch. 443, § 58, at 1187. The 1995 version became effective July 1, 1995. *See id.* at § 394, at 1340. Finally, the statute was amended again in 1997 to provide for different penalties depending on whether the victim was under 14 years or 16 years of age. *See* 1997 Nev. Stat., ch. 455, § 1, at 1720. These changes became effective October 1, 1997. *See id.* at § 9 at 1723.

In addition, the parties had a discussion regarding the proper sentencing statute during the sentencing hearing. Johnston's counsel agreed with the sentencing court's conclusion that Johnston committed the offenses after the effective date of the 1995 version. The sentencing court subsequently imposed concurrent terms of life in prison with the possibility of parole after 20 years for Johnston's convictions of sexual assault of a child under the age of 14 years.

In light of the discussion between the sentencing judge and Johnston's counsel during the sentencing hearing, Johnston failed to demonstrate the sentencing court improperly imposed sentence pursuant to the 1995 version of NRS 200.366. Accordingly, Johnston failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, we conclude the district court did not err by denying Johnston's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Mary Kay Holthus, District Judge  
Edward T. Reed  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk