

IN THE SUPREME COURT OF THE STATE OF NEVADA

DYARELL D. HUNT,

No. 37618

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

OCT 18 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On June 30, 1993, the district court convicted appellant, after a jury trial, of one count of burglary while in possession of a firearm, one count of assault with a deadly weapon, and one count of possession of a firearm by an ex-felon. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve three concurrent terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on December 14, 1993.

On September 14, 1994, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October 7, 1994, the district court denied the petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On May 29, 1996, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 17, 1996, the district court denied the petition. This court dismissed appellant's subsequent appeal.<sup>3</sup>

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<sup>1</sup>Hunt v. State, Docket No. 24562 (Order Dismissing Appeal, November 24, 1993).

<sup>2</sup>Hunt v. State, Docket No. 26446 (Order Dismissing Appeal, December 19, 1994).

<sup>3</sup>Hunt v. State, Docket No. 29280 (Order Granting Rehearing, Reinstating, and Dismissing Appeal, February 10, 1998).

On February 2, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 22, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his habitual criminal adjudication violated due process because the State amended the information after the jury verdict to include notice of habitual criminality without permission from the district court in violation of D.C.R. 13 and NRS 173.095.<sup>4</sup> Appellant believed his sentences were illegal, and therefore appellant requested that he be resentenced.

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.<sup>5</sup> A motion to correct an illegal sentence presupposes a valid conviction and "cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing."<sup>6</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. There is no indication that the district court was without jurisdiction and appellant's sentences were facially legal.<sup>7</sup> Moreover, even if this court was to overlook the procedural infirmity, appellant's due process claim lacked merit. NRS 207.010(5), at the time appellant committed his crime, provided that "[a] count under this section 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

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<sup>4</sup>D.C.R. 13 sets forth the procedure for making a motion in the district court. NRS 173.095(1) provides that "[t]he court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced."

<sup>5</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


<sup>6</sup>Id.


<sup>7</sup>See 1985 Nev. Stat., ch. 544, § 1, at 1643-44.


by subsection 6 held, until 15 days after the separate filing.”<sup>8</sup> The sentencing hearing, during which the district court exercised its discretion in adjudicating appellant a habitual criminal based upon the violent nature of his present and past offenses, occurred approximately one month after the information was amended. Further, the State did file a motion to amend the information. On March 31, 1993, the State filed a notice of motion and motion to amend information to include notice of habitual criminality. On April 7, 1993, the district court entered an order granting the State’s motion to amend the information. Thus, the district court properly denied appellant’s motion to correct an illegal sentence.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General  
Clark County District Attorney  
Dyarell D. Hunt  
Clark County Clerk

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<sup>8</sup>Id. at 1644.

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).