

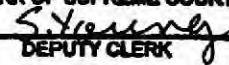
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRIN LEWIS KELLOGG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83161-COA

FILED

DEC 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darrin Lewis Kellogg appeals from an order of the district court denying a motion to correct an illegal sentence filed on May 12, 2021. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

In his motion, Kellogg claimed his sentence was illegal because the substance abuse evaluation required by NRS 484C.300 was not completed. 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*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Because “[a] motion to correct an illegal sentence presupposes a valid conviction,” it “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.” *Id.* (internal quotation marks omitted).

Kellogg’s motion challenged an alleged error that occurred prior to or at sentencing. It did not allege that the sentence imposed was facially

illegal.¹ And Kellogg failed to demonstrate the district court was without jurisdiction to sentence him. While an evaluation is required prior to sentencing, *see* NRS 484C.300, Kellogg failed to demonstrate the lack of an evaluation caused the district court to lose jurisdiction. *See* Nev. Const. art. 6, § 6(1); NRS 171.010; *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (“Subject matter jurisdiction is the court’s authority to render a judgment in a particular category of case.” (internal quotation marks omitted)).

Kellogg argues on appeal that the failure to consider his underlying claim on the merits “renders NRS 484C.300 a nullity.” Kellogg’s argument is without merit. Such challenges may be raised on direct appeal from a judgment of conviction, *see, e.g., Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009) (reviewing a district court’s sentencing decision for abuse of discretion), or in a collateral attack on the validity of the judgment of conviction, *see* NRS 34.724(1); *Edwards*, 112 Nev. at 708, 918 P.2d at 324 (“Issues concerning the validity of a conviction or sentence, except as detailed in this opinion, must be raised in habeas proceedings.”).


Finally, Kellogg takes issue with the district court’s order, claiming both that it relies solely on overturned law and that it does not contain sufficient legal analysis. The district court’s order relied on *Edwards*. Kellogg fails to demonstrate that *Edwards* has been overturned simply because it cited to a case, *see Passanisi v. State*, 108 Nev. 318, 831 P.2d 1371 (1992), that was partially overturned by a later case, *see Harris v. State*, 130 Nev. 435, 446–47, 329 P.3d 619, 627 (2014) (replacing the

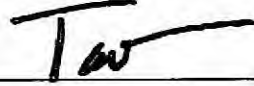
¹Kellogg was convicted of a violation of NRS 484C.110(1), and his sentence of 4 to 10 years is within the parameters provided by the relevant sentencing statute. *See* NRS 484C.410(e).

Passanisi test for determining when a remedy is incident to the proceedings). Kellogg also fails to demonstrate the district court provided insufficient legal analysis, and we conclude that any error has not affected Kellogg's substantial rights. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

For the foregoing reasons, we conclude the district court did not err by denying Kellogg's motion and Kellogg is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Thomas W. Gregory, District Judge
Karla K. Butko
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk