

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELIZABETH KAY CARLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83452-COA

**FILED**

DEC 22 2021

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

*ORDER OF AFFIRMANCE*

Elizabeth Kay Carley appeals from an order of the district court denying a motion to correct an illegal sentence filed on July 8, 2021. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Carley claimed she was entitled to the application of the 2020 amendments to the habitual criminal statute, which would result in her being ineligible for habitual criminal treatment. A motion to correct an illegal sentence provides a means to challenge the facial legality of a sentence. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). However, it “presupposes a valid conviction.” *Id.* (quotation marks omitted). Thus, 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.* Because Carley challenged her adjudication as a habitual criminal and not the legality of her sentences themselves, her claim was outside the scope of claims permissible in a motion to correct an illegal sentence.

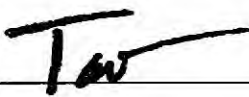
Moreover, as a separate and independent ground to deny relief, Carley’s claim lacked merit. Carley, relying on *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008), claimed that she was entitled to the application of the

amendments because her conviction was not yet final when the habitual criminal statute was amended. Carley's reliance on *Nika* was misplaced as that case applies to situations where the court announces a change in state law. See 124 Nev. at 1276, 198 P.3d at 843. In the instant situation, the law was changed by the Legislature. And unless otherwise indicated by the Legislature, the statutes in effect at the time a crime is committed determine what the proper penalty may be.<sup>1</sup> See *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Because the Legislature has not otherwise indicated, the 2020 amendments to the habitual criminal statute do not apply to Carley.

For the foregoing reasons, we conclude the district court did not err by denying Carley's motion, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

---

<sup>1</sup>Carley was sentenced in 2014 for crimes she committed in 2012. Accordingly, the 2009 version of NRS 207.010 was properly applied.

cc: Hon. Cristina D. Silva, District Judge  
Elizabeth Kay Carley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk