

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY EUGENE MCKINLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84475-COA

FILED

NOV 16 2022

ELIZABETH A. BE
CLERK OF SUPREME
COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Eugene McKinley appeals from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

McKinley argues that the district court erred by denying his March 1, 2022, motion. In his motion, McKinley contended that the trial court erred by denying his *Batson*¹ challenges to the State's use of peremptory strikes to remove jurors from the venire.

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). "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).

¹*Batson v. Kentucky*, 476 U.S. 79 (1986).

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McKinley's claim challenged alleged errors in the trial proceedings that occurred prior to the imposition of his sentence. Therefore, McKinley's claim was not within the scope of a motion to correct an illegal sentence. Accordingly, without considering the merits of McKinley's claim, we conclude that the district court did not err by denying the motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Crystal Eller, District Judge
Gary Eugene McKinley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk