

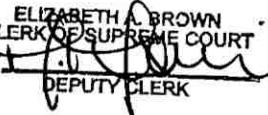
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS FRANK WILCOX,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85707-COA

FILED

MAY 08 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nicholas Frank Wilcox appeals from an order of the district court denying a motion to correct an illegal sentence filed on October 13, 2022. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Wilcox argues the district court erred by denying his motion. In his motion, Wilcox claimed that the district court lacked jurisdiction to sentence him and his sentence was at variance with the controlling statutes because the Nevada Revised Statutes (NRS) were not properly enacted. Wilcox claimed the NRS lack enacting clauses, the process for repealing the NRS was not proper, the Legislature improperly delegated power to the revision committee, and the historical notes for the statutes at issue do not show the 1957 repeal of the NRS.

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). "An illegal sentence" is "one at variance with the controlling sentencing statute, or illegal in the sense that the court goes beyond its

authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided.” *Id.* (internal quotation marks omitted). “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).

Wilcox’s claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence because they did not implicate the jurisdiction of the district court, *see* Nev. Const. art. 6, § 6(1); NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional power to adjudicate the case.” (internal quotation marks and emphasis omitted)), and his sentence of 124 to 312 months is facially legal and not at variance with the controlling statute, *see* NRS 200.508(1). Accordingly, we conclude the district court did not err by denying the motion.<sup>1</sup>

Wilcox also argues that the district court committed judicial misconduct by failing to timely file his documents and by proceeding with the hearing to deny the motion when the district court was made aware of the missing filings prior to the hearing date. Further, he argues the State committed misconduct because it did not file its opposition within 14 days of receiving appellant’s motion and because the State sent Wilcox the opposition three days later than stated on the notice of service. Even assuming these were errors, given that Wilcox’s claims were outside the

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<sup>1</sup>To the extent Wilcox argues that the cumulation of his underlying claims is error warranting reversal, such a claim was not raised below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

scope of a motion to correct an illegal sentence, Wilcox failed to demonstrate the alleged errors either individually or cumulatively affected his substantial rights. Accordingly, we conclude Wilcox is not entitled to relief on these claims. *See* NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Mary Kay Holthus, District Judge  
Nicholas Frank Wilcox  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk