

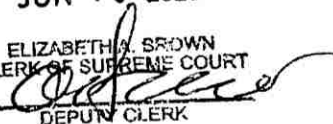
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK MCCAFFREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85709-COA

FILED

JUN 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Patrick McCaffrey 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; Tierra Danielle Jones, Judge.

In his motion and supporting memorandum, McCaffrey claimed that the Statutes of Nevada were repealed and the Nevada Revised Statutes were not properly created by the Legislature. McCaffrey also appeared to argue that his conviction was invalid because the Nevada Revised Statutes do not contain enacting clauses as required by the Nevada Constitution. In addition, McCaffrey claimed that the commission which made recommendations regarding the creation of the Nevada Revised Statutes during the 1950s was not lawful and that justices of the Nevada Supreme Court unconstitutionally participated in the creation of the Nevada Revised Statutes in violation of separation of powers principles. Based on those assertions, McCaffrey contended that the sentencing court had no authority or jurisdiction to convict him or impose his sentence.

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).

McCaffrey’s claims did not implicate the jurisdiction of the courts. *See Nev. Const. art. 6, § 6; 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 omitted)); *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)). Moreover, McCaffrey did not demonstrate that the Statutes of Nevada were repealed and no longer effective. We note the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. *See NRS 220.110; NRS 220.120*. Because McCaffrey’s claims did not implicate the jurisdiction of the courts, he failed to demonstrate the sentencing court was without jurisdiction to convict him or impose a sentence.

In addition, the sentencing court imposed a prison term of 96 to 240 months for the conviction of attempted sexual assault of a minor under

14 years of age. And McCaffrey's sentence fell within the parameters of the relevant statutes. *See* NRS 193.153(1)(a)(1); 2015 Nev. Stat., ch. 399, § 8, at 2235-36 (NRS 200.366). McCaffrey thus did not demonstrate that the sentence imposed was in excess of the statutory maximum. Accordingly, we conclude the district court did not err by denying the motion, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

¹McCaffrey also argues that the State improperly argued before the district court that his claims should be procedurally barred due to application of the procedural requirements of NRS Chapter 34. Claims within the narrow scope of a motion to correct an illegal sentence are not subject to the procedural requirements of NRS Chapter 34. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. However, as explained previously, McCaffrey's claims did not implicate the jurisdiction of the courts, and his sentence was not in excess of the statutory maximum. McCaffrey's claims were thus not properly raised in a motion to correct an illegal sentence. McCaffrey is therefore not entitled to relief based on this claim.

The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Tierra Danielle Jones, District Judge
Patrick McCaffrey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk