

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HERMAN ALFONSO MORALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86212-COA

FILED

OCT 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Herman Alfonso Morales appeals from an order of the district court denying a motion to correct an illegal sentence filed on February 1, 2023. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

In his motion and supporting memorandum, Morales claimed the sentencing court did not have the jurisdiction to impose his sentence. He claimed that the relevant sentencing statutes were repealed in 1957 and that his sentences are necessarily at variance with the controlling statutes because, as a result of the aforementioned repeal, there are no controlling statutes.

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). Morales did not allege that his sentence exceeded the statutory maximum.

Further, Morales failed to demonstrate that the sentencing court lacked jurisdiction to impose his sentence. While the laws in effect prior to 1957 were repealed in 1957, they were simultaneously reenacted as the Nevada Revised Statutes in the same senate bill. *See* 1957 Nev. Stat., ch. 2, §§1 and 3, at 1-2. And the simultaneous repeal of NRS 171.010's source law would not have affected its validity. *See* 1957 Nev. Stat., ch. 2, § 4(2), at 2 ("The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act."). Therefore, we conclude the district court did not err by denying Morales's motion.

Morales makes the following claims on appeal. First, Morales claims that the district court failed to acknowledge that the State confessed error when it stated, "Defendant's Motion to Correct Illegal sentence offers numerous risible grounds for why his sentence is illegal and unconstitutional." This statement is not a confession of error by the State. Rather, the State summarized Morales's claims in a manner that marked its disagreement with his arguments. Therefore, we conclude Morales fails to demonstrate he was entitled to relief on this claim.

Second, Morales claims the district court erred by allowing the State to mischaracterize his motion: the State argued Morales should have pursued his claims in a postconviction petition for a writ of habeas corpus. The district court did not find that Morales should have pursued his claims in a postconviction habeas petition. Therefore, we conclude Morales fails to demonstrate that he is entitled to relief on this claim.

Third, Morales claims that the State committed prosecutorial misconduct because his motion for continuance was held for 12 days before it was filed, causing the motion to be filed after the hearing was held on his motion. He claims this cost him the ability to respond to the State's opposition. First, Morales fails to show that this was prosecutorial misconduct because he fails to demonstrate the State, in its capacity as a prosecutor, had a duty to file Morales's motion for a continuance. Second, because Morales's motion to correct an illegal sentence lacked merit, Morales fails to demonstrate that any error concerning the late filing of the motion for continuance affected his substantial rights. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, we conclude Morales fails to demonstrate that he is entitled to relief on this claim.

Finally, Morales claims he never received a copy of the district court's order denying his motion, which made filing his opening brief more difficult. Because Morales's motion to correct an illegal sentence lacked merit, Morales is unable to demonstrate that not having the district court's order denying his motion affected his substantial rights.¹ *See id.* Therefore,

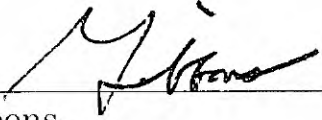
¹We note the district court's order denied Morales relief on the ground that he failed to satisfy the requirements specific to a motion for sentence modification. Because Morales filed a motion to correct an illegal sentence and not a motion to modify sentence, the district court applied the wrong standard in denying his motion. However, because the district court reached the correct result, we affirm the denial. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

we conclude Morales fails to demonstrate that he is entitled to relief on this claim.

As a final matter, we note that the district court's certificate of service does not indicate that Morales was served with the district court's final order. Thus, we direct the district court clerk to serve Morales with a copy of the district court's final order.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Monica Trujillo, District Judge
Herman Alfonso Morales
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk