

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN F.P. CIOLINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87037-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Stephen F.P. Ciolino appeals from a district court order denying a “motion to vacate judgment N.R.S. 176.515” filed on June 14, 2023.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Ciolino was convicted, pursuant to a guilty plea, of two counts of first-degree murder with the use of a deadly weapon. In his motion, Ciolino contended the trial-level court lacked jurisdiction to hear his case because NRS 200.030, which defines degrees of murder, only lists first- and second-degree murder and does not authorize the court to consider the offense of “murder with the use of a deadly weapon.”

¹In denying Ciolino’s motion, the district court held that Ciolino was “unable to show the sentencing Court made a mistake in rendering judgment or that the sentence is otherwise facially illegal.” In so holding, the district court appeared to construe Ciolino’s motion as a motion to modify and/or correct an illegal sentence. Ciolino does not challenge this construction on appeal, and therefore we apply this same construction, particularly when the relief sought did not implicate NRS 176.515.

“[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). 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. *Id.* “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).

Ciolino’s claim did not allege that his sentence, consecutive terms of life in prison without the possibility of parole, was based on mistaken assumptions about his criminal record that worked to his extreme detriment or that his sentence was imposed in excess of the statutory maximum. Moreover, Ciolino’s claim that NRS 200.030 does not list murder with the use of a deadly weapon does not implicate the jurisdiction of the courts.² See Nev. Const. art. 6, § 6; 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 omitted)). To the extent Ciolino challenged the validity of his conviction, his claim was outside the scope of claims permissible in a motion

²We note that the State filed an amended information charging Ciolino with two counts of first-degree murder with the use of a deadly weapon and that the amended information referenced the statute authorizing the deadly weapon enhancement, NRS 193.165.

to modify and/or correct an illegal sentence. Accordingly, we conclude that the district court did not err by denying Ciolino's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Stephen F.P. Ciolino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk