

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY RAY RILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88301-COA

FILED

OCT 09 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Billy Ray Riley appeals from a district court order denying a motion to correct an illegal sentence filed on February 7, 2024. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

In his motion, Riley alleged the district court was without jurisdiction to adjudicate him a habitual criminal for his conviction for robbery with the use of a deadly weapon because the State failed to follow the proper procedure for such an adjudication or present evidence of Riley's prior convictions at sentencing. 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).

The record belies Riley's claim that the sentencing court was without jurisdiction to adjudicate him a habitual criminal. Before Riley's

sentencing hearing, the State filed an amended indictment that included a count of habitual criminality. See NRS 207.016(2); *Grey v. State*, 124 Nev. 110, 124, 178 P.3d 154, 163-64 (2008) (“The relevant statutory scheme clearly premises the district court’s authority to impose a habitual criminal sentence on the State’s filing of an allegation of habitual criminality.”). Riley failed to demonstrate that the State must refile its allegation of habitual criminality when another count was subsequently reversed but the count underlying the habitual criminal adjudication was ordered to remain in effect. Accordingly, we conclude the district court did not err by denying this claim.

Riley also argued that the sentencing court improperly relied on the State’s “untruthful allegation” at the sentencing hearing that it had properly demonstrated Riley’s habitual criminality. On appeal, Riley maintains the district court erred in denying his motion because the sentencing court failed to review each of the judgments of conviction relied on by the State to determine their validity. Riley’s argument falls outside the narrow scope of claims permissible in a motion to correct an illegal sentence. See *Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, we conclude the district court did not err by denying Riley’s motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Billy Ray Riley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk