

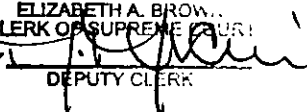
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 89756-COA

**FILED**

**JUN 16 2025**

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 November 5, 2024. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Riley contends the district court erred by denying his motion to correct an illegal sentence. Specifically, Riley asserts his motion should have been granted because he should not have been sentenced under the habitual criminal statute when the State failed to properly notice him pursuant to NRS 173.095 and NRS 207.010 that it was seeking habitual criminal adjudication. He contends the post-verdict amendment of the indictment to add a charge of habitual criminality was improper and therefore the sentencing court lacked authority to impose a habitual criminal 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).

Riley does not assert that his sentence was facially illegal. Instead, Riley argues that the State’s failure to properly notice and amend the indictment deprived the sentencing court of jurisdiction to impose a habitual criminal sentence. This claim is not supported by the record. Before the jury convicted Riley, the State moved to amend the charges to include a habitual criminal allegation. And after the jury found Riley guilty, the State filed an amended indictment that included the habitual criminal allegation. The versions of NRS 173.095 and NRS 207.010 in effect at the time of the offense permitted filing a habitual criminal allegation after conviction for the primary offense. *See* 1985 Nev. Stat., ch. 366, §§ 1-2, at 1026-27. Therefore, Riley did not demonstrate the sentencing court lacked jurisdiction to impose a sentence under NRS 207.010, and we conclude the district court did not err in denying Riley’s motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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