

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 90038-COA

**FILED**

**JUL 30 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY Elizabeth Allen  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Billy Ray Riley appeals from a district court order denying a motion to correct an illegal sentence filed on October 29, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, 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 information 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 information deprived the sentencing court of jurisdiction to impose a habitual criminal sentence. This claim is not supported by the record.

After the jury found Riley guilty, the State filed a motion to amend the information to include a habitual criminal allegation. The district court granted the motion, and the State filed an amended information that included the habitual criminal allegation. The version of 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, § 2, at 1027. To the extent the State should have filed the count of habitual criminal in a separate document instead of amending the information after the verdict, *compare id.* (allowing a habitual criminal count to “be separately filed after conviction of the primary offense”), *with* 1985 Nev. Stat., ch. 366, § 1, at 1026 (former NRS 173.095, providing an information may “be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced”), Riley has not shown that any error deprived the district court of jurisdiction at sentencing. *Cf. LaChance v. State*, 130 Nev. 263, 267, 321 P.3d 919, 928 (2014) (concluding any error associated with the State erroneously filing a notice of its intent to seek habitual criminal adjudication, instead of filing a separate count or amending the information to include the allegation, did not constitute plain error and affirming the district court’s adjudication of the defendant as a habitual

offender). Therefore, 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. Mary Kay Holthus, District Judge  
Billy Ray Riley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk