

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR A. GRAVES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38529

FILED

MAY 23 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On August 24, 1993, the district court convicted appellant, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated appellant as a habitual criminal and sentenced appellant to serve two concurrent terms of twenty years in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence.¹

On August 13, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 12, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegally enhanced pursuant to NRS 207.010 (the habitual criminal statute) because the court enhanced his sentence solely on the basis of his

¹Graves v. State, 112 Nev. 118, 912 P.2d 234 (1996).

three prior felonies and failed to consider all other underlying factors, and because the prior felony convictions used to enhance his sentence were stale and non-violent.

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 that the sentence was imposed in excess of the statutory maximum.² A motion to correct an illegal sentence may not “be used as a vehicle for challenging the validity of a judgment of conviction or sentence based upon alleged errors occurring at trial or sentencing.”³

Our review of the record on appeal reveals that the district court did not err in denying appellant’s motion. Appellant’s sentence is facially legal and there is no indication in the record that the district court was without jurisdiction to sentence appellant.⁴ Appellant’s claim challenging his habitual criminal enhancements fell outside the narrow scope of claims that can be raised in a motion to correct an illegal sentence because he challenged alleged errors that occurred at sentencing. Thus, appellant is not entitled to relief.

²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

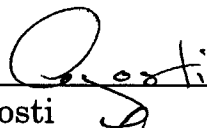
³Id.


⁴See 1985 Nev. Stat., ch. 366, § 2, at 1026.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Arthur A. Graves, Jr.
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.