

IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN A. WINKLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39857

**FILED**

APR 10 2003

ORDER OF AFFIRMANCE

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

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

On August 3, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of mid-level trafficking in a controlled substance. The district court sentenced appellant to serve a maximum term of one hundred and twenty months with minimum parole eligibility after thirty-six months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 15, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 6, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he should not have been sentenced for mid-level trafficking. Rather, appellant contended that he should have been sentenced for low-level trafficking because the amount of drugs listed in the amended information, 13.9 grams, was less

than the amount of drugs eligible for mid-level trafficking treatment, 14 to 28 grams.<sup>1</sup>

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.<sup>2</sup> "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.'"<sup>3</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant was advised of the consequences and entered a guilty plea to one count of mid-level trafficking. Appellant's sentence fell within the sentencing range of mid-level trafficking. Appellant's attempt to repudiate his guilty plea fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Thus, we conclude that the district court did not err in summarily denying appellant's petition.

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<sup>1</sup>See NRS 453.3385(2) (providing for a penalty of not less than 2 years nor more than 15 years if the quantity of the prohibited controlled substance involved is 14 grams or more but less than 28 grams); Compare NRS 453.3385(1) (providing for a penalty of not less than 1 year nor more than 6 years if the quantity of the prohibited controlled substance involved is 4 grams or more but less than 14 grams).


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

<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Warren A. Winkler  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.