

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO J. GODINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40400

FILED

SEP 19 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 May 1, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a term of sixty to one hundred and eighty months in the Nevada State Prison. The district court further imposed a mandatory special sentence of lifetime supervision. No direct appeal was taken.

On September 16, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On October 8, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court lacked jurisdiction to impose a special sentence of lifetime supervision because he had stipulated to a sentence of five to fifteen years. Appellant further claimed that imposition of lifetime supervision was cruel and unusual punishment.

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>1</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>2</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction in the instant case.<sup>3</sup> Further, NRS 176.0931 requires imposition of a special sentence of lifetime supervision if the defendant is convicted of a sexual offense. The crime of attempted lewdness with a child under the age of fourteen is a sexual offense. Appellant was informed in the written guilty plea agreement that the district court would include as a part of his sentence, in addition to any other penalties, a special sentence of lifetime supervision. Therefore, we affirm the order of the district court.


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<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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

<sup>3</sup>NRS 201.230; NRS 193.330(1)(a)(1).

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.

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

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

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

cc: Hon. Sally L. Loehrer, District Judge  
Francisco J. Godinez  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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