

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC STEPHENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40695

**FILED**

JAN 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Roberts*  
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 December 26, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on appeal.<sup>1</sup>

On November 13, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court.<sup>2</sup> The State opposed the motion. Appellant supplemented his motion. On December 5, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that that his sentence was illegal because "lifetime supervision" was not explained to him before he entered his guilty plea. Appellant further claimed that lifetime

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<sup>1</sup>Stephens v. State, Docket No. 37257 (Order of Affirmance, April 12, 2001).

<sup>2</sup>Additionally, appellant filed a motion for an evidentiary hearing, a motion to proceed in forma pauperis, and a motion for the appointment of counsel.

supervision violated his liberty interests, separation of powers and double jeopardy.

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>3</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>4</sup>

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. 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 sexual assault 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. Appellant may not challenge the voluntariness of his guilty plea in a motion to correct an illegal sentence. Finally, appellant failed to demonstrate that any alleged constitutional violations rendered his sentence illegal.

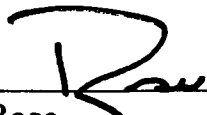
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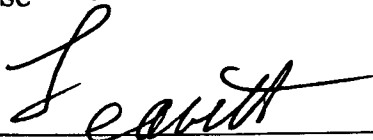
<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


<sup>4</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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. John S. McGroarty, District Judge  
Marc Stephens  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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