

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41027

FILED

OCT 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Appellant also purports to appeal from the district court's order denying his motion for further proceedings. We note that the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ No statute or court rule provides for an appeal from an order denying a motion for further proceedings. To the extent that appellant challenges the denial of the motion for further proceedings, we conclude that this court lacks jurisdiction to entertain an appeal on that issue.

In the motion to correct an illegal sentence, appellant argued that he should not have been sentenced as a habitual criminal because the information did not include a separate count for adjudication as a habitual criminal.²

"Motions to correct illegal sentences address only the facial legality of a sentence."³ An "illegal sentence" is one that is at variance


¹Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).


²See NRS 207.010.


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

with the controlling statute or imposed without jurisdiction.⁴ Appellant has not shown that his sentence was outside of statutory limits or that the district court acted without jurisdiction in imposing sentence. "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."⁵ As appellant is challenging his judgment of conviction, his challenge is not properly raised in a motion made pursuant to NRS 176.555. We therefore conclude that the district court did not err by denying the motion to correct an illegal sentence, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

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

⁴Id.

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).