

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENDRICK JAMEL COLLIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41047

**FILED**

NOV 25 2003

ORDER OF AFFIRMANCE

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

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

On November 4, 1998, the district court convicted Collier, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. The district court sentenced Collier to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole plus concurrent terms totaling 106 to 480 months. The district court also ordered Collier to pay restitution in the amount of \$2,158.20.<sup>1</sup> This court dismissed Collier's direct appeal.<sup>2</sup>

On May 3, 2001, Collier filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied Collier's petition. This court affirmed the denial of his petition.<sup>3</sup>

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<sup>1</sup>On February 11, 2003, the district court entered an amended judgment of conviction to clarify the recipients of the restitution.

<sup>2</sup>Collier v. State, Docket No. 33311 (Order Dismissing Appeal, August 11, 2000).

<sup>3</sup>Collier v. State, Docket No. 38874 (Order of Affirmance, October 18, 2002).

On January 24, 2003, Collier filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. The district court denied Collier's motion on February 19, 2003. This appeal followed.

In his motion, Collier raised numerous allegations that his sentence was illegal because the district court ordered him to pay restitution in his judgment of conviction.

NRS 176.555 provides that a district court may correct an illegal sentence at any time. A motion to correct an illegal sentence, however, 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>4</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>5</sup>

Collier contended that his sentence was illegal because the district court did not have the statutory authority to order him to pay \$2,158.20 in victim restitution. However, NRS 176.033(1)(c) provides that a district court has the authority to "set an amount of restitution for each victim" of the criminal offense. Thus, the district court had the statutory authority to order Collier to pay restitution to the victims, and his sentence was not facially illegal.

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<sup>4</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

Additionally, Collier contended that his sentence was illegal because the district court failed to conduct an evidentiary hearing prior to ordering restitution and failed to otherwise explain its reasoning.<sup>6</sup>

These arguments challenged the factual basis for the district court's imposition of restitution. Such challenges fall outside of the narrow scope of permissible issues that may be raised in a motion to correct an illegal sentence, and are waived if they are not raised on direct appeal.<sup>7</sup> Collier did not object to the restitution order at his sentencing hearing, or raise these issues in his direct appeal. Thus, Collier waived these arguments. We conclude that Collier's arguments were therefore improperly raised in this motion, and were without merit on this basis.<sup>8</sup> Collier did not challenge the jurisdiction of the district court. Therefore, we affirm the district court order denying Collier's motion.

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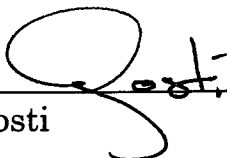
<sup>6</sup>Collier also contended that the district court did not specify to whom the \$2,158.20 was to be paid. The State did not oppose this contention. The district court amended its judgment of conviction to specify to whom the victim restitution was to be paid. Therefore, any confusion about this issue has been clarified. See generally, *Botts v. State*, 109 Nev. 567, 568-69, 854 P.2d 856, 857 (1993) (stating that a restitution order must be based on a specific dollar amount).


<sup>7</sup>See *Martinez v. State*, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999) (holding that an appellant's failure to object to an order to pay restitution at his sentencing hearing waived the issue on appeal).


<sup>8</sup>Collier also requested that the district court refund money withdrawn from his inmate account to pay for restitution. However, this issue also falls outside the scope of a motion to correct an illegal sentence.

Having review the record on appeal, and for the reasons set forth above, we conclude that Collier is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Agosti

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

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

cc: Hon. Donald M. Mosley, District Judge  
Kendrick Jamel Collier  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).