

IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD C. HOWARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41115

**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 Reginald Howard's motion to correct an illegal sentence.

On July 15, 1998, the district court convicted Howard, pursuant to a jury verdict, of one count of burglary. The district court adjudicated Howard a habitual criminal and sentenced him to serve a term of life in the Nevada State Prison with the possibility of parole in ten years. This court dismissed Howard's direct appeal.<sup>1</sup>

Howard filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied Howard's petition. This court affirmed the denial of his petition.<sup>2</sup>

On July 24, 2001, Howard filed a proper person motion to correct an illegal sentence in the district court. The district court denied Howard's motion. No appeal was taken. On January 13, 2003, Howard filed a second motion to correct an illegal sentence in the district court.

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<sup>1</sup>Howard v. State, Docket No. 32854 (Order Dismissing Appeal, August 11, 2000).

<sup>2</sup>Howard v. State, Docket No. 38108 (Order of Affirmance, January 15, 2003).

The State opposed the motion. Howard filed a reply. On February 6, 2003, the district court denied Howard's motion. This appeal followed.

In his motion, Howard contended that his sentence was illegal because the State filed a constitutionally defective amended information and the district court was without jurisdiction over his case.

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>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>

Howard's allegation that the State's amended information was constitutionally defective did not challenge the facial legality of his sentence. Rather, this allegation raised errors in proceedings that occurred prior to the imposition of his sentence. Thus, Howard's allegation fell outside the scope of permissible claims that may be raised in a motion to correct an illegal sentence. Moreover, this court concluded in its order affirming the district court's denial of Howard's habeas corpus petition that Howard was properly charged by the amended information. Thus, Howard's allegation was also barred from being re-raised by the doctrine of the law of the case.<sup>5</sup>

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

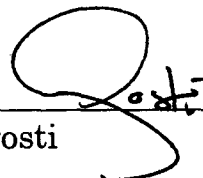
<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

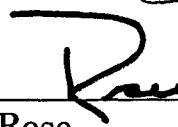
<sup>5</sup>See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).


Howard also contended that his sentence was illegal because the district court was without subject matter jurisdiction over his case. NRS 171.010 provides that district courts have jurisdiction over crimes that occur in the county in which the district court is located.<sup>6</sup> Howard was convicted of burglarizing a garage located in Clark County, Nevada by the Eighth Judicial District Court. The Eighth Judicial District Court is the proper district court for Clark County, Nevada. Thus, the district court exercised proper jurisdiction over Howard's case. We conclude, therefore, that the district court properly denied Howard's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Howard is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>6</sup>See Pendleton v. State, 103 Nev. 95, 98, 734 P.2d 693, 695 (1987).

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michael L. Douglas, District Judge  
Reginald Clarence Howard  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk