

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY EARL PARK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41639

FILED

APR 14 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Billy Park's motion to correct an illegal sentence.

On June 19, 1998, the district court convicted Park, pursuant to a guilty plea, of attempted murder with the intent to promote, further, or assist a criminal gang. The district court sentenced Park to serve two consecutive terms of 24 to 240 months in the Nevada State Prison. Park did not file a direct appeal.

On March 11, 2003, Park filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On May 30, 2003, the district court denied Park's motion. This appeal followed.

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

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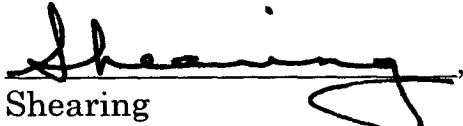
<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

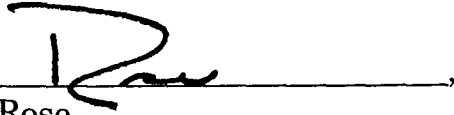
challenge alleged errors in proceedings that occur prior to the imposition of sentence."<sup>2</sup>


In his motion, Park contended that there was insufficient evidence adduced at the preliminary hearing to support the criminal gang enhancement. This claim is outside the scope of a motion to correct an illegal sentence because it concerns alleged errors that occurred prior to Park's sentencing. Park did not claim that the district court was without jurisdiction to impose his sentence, or that his sentence was in excess of the statutory maximum. Consequently, the district court did not err in denying Park's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Park is not entitled to relief and that briefing and oral argument are unwarranted.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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

<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge  
Billy Earl Park  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk