

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY A. O'GUINN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41849

FILED  
MAY 26 2004

ORDER OF AFFIRMANCE

MAY 26 2004  
*L. Cantillo*  
Clerk of the Court

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

On January 12, 2001, the district court convicted O'Guinn, pursuant to a plea of guilty but mentally ill, of one count of open or gross lewdness, and two counts each of burglary and sexual assault. Additionally, O'Guinn was adjudicated a habitual criminal. The district court sentenced O'Guinn to serve a period totaling life in the Nevada State Prison with the possibility of parole after ten years. On appeal, this court remanded the matter to the district court to allow O'Guinn the opportunity to withdraw his plea and enter a plea of not guilty by reason of insanity.<sup>1</sup> O'Guinn subsequently declined to withdraw his guilty plea.

On June 13, 2003, O'Guinn filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 31, 2003, the district court denied O'Guinn's motion. This appeal followed.

<sup>1</sup>O'Guinn v. State, 118 Nev. 849, 59 P.3d 488 (2002).

In his motion, O'Guinn contended that the district court erred in adjudicating him a habitual criminal because the amended information did not provide notice that the State was pursuing habitual criminal status. O'Guinn further claimed that the amended information did not specify which penalty he was facing under the sexual assault statute.<sup>2</sup>

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>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying O'Guinn's motion. O'Guinn's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. O'Guinn's sentence is within the range prescribed by statute,<sup>5</sup> and there is nothing in the record to suggest that the district court was without jurisdiction to impose the sentence.

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<sup>2</sup>See NRS 200.366.

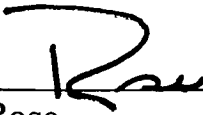
<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

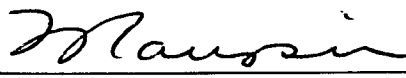
<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


<sup>5</sup>See NRS 207.010(1)(b).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that O'Guinn is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

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

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

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Jackie Glass, District Judge  
Roy A. O'Guinn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have reviewed all documents that O'Guinn has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that O'Guinn has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.