

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MORROW,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42578

FILED

JUL 23 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On March 26, 1993, the district court convicted appellant, pursuant to a jury verdict, of voluntary manslaughter with the use of a deadly weapon and attempted murder with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced him to serve two life terms in the Nevada State Prison with the possibility of parole after ten years. The sentences were to run concurrently. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on August 16, 1994.

On November 21, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 12, 2003, the district court denied appellant's motion. This appeal followed.

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<sup>1</sup>Morrow v. State, Docket Nos. 27659, 32241 (Order Dismissing Appeals, August 4, 1998).

In his motion, appellant contended that the judgment of conviction is unclear as to whether he was sentenced as a habitual offender because it did not include a reference to NRS 207.010, the statute governing penalty enhancement for habitual criminals. Appellant asserted that the failure to include a reference to NRS 207.010 in the judgment of conviction rendered his sentence illegal. He also claimed that the district court is without authority to simply amend the judgment of conviction because to do so would violate the double jeopardy clause in the Nevada constitution.

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>2</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>3</sup> Appellant has not demonstrated that his sentence was in excess of the statutory maximum or that the district court was without jurisdiction in this case. Moreover, the judgment of conviction reflects that appellant was adjudicated a habitual criminal. Furthermore, the State included a reference to NRS 207.010 in its motion to have appellant adjudicated a habitual criminal. Prior to the entry of the judgment of conviction, the district court orally clarified the judgment of conviction to note that appellant was sentenced pursuant to NRS 207.010. We

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


<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

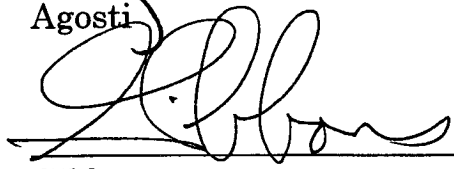
therefore conclude that the district court did not err by denying the motion to correct an illegal sentence.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

 \_\_\_\_\_, J.  
Becker

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

 \_\_\_\_\_, J.  
Gibbons

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

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<sup>4</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.