

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN LAMONT MCCOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76547-COA

FILED

MAY 15 2019

ETHA A. BROWN
CLERK OF THE COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Darren Lamont McCoy appeals from a district court order summarily denying a motion to modify and/or correct an illegal sentence filed on June 14, 2018.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

McCoy claims the district court erred by denying his motion because the district court did not have jurisdiction to impose his sentence. To this end, McCoy argues that the State failed to file a timely notice of habitual criminality, the notice did not specify that it pertained to charges in the amended indictment, and the district court sentenced him less than 15 days after the notice was filed.

NRS 176.555 states a district “court may correct an illegal sentence at any time.” 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. *Edwards v. State*, 112 Nev. 704, 708, 918


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


P.2d 321, 324 (1996). The Nevada Supreme Court has determined that district courts lack jurisdiction to sentence defendants under the habitual criminal statutes when the State fails to formally file notices of habitual criminality. *Grey v. State*, 124 Nev. 110, 124, 178 P.3d 154, 163-64 (2008); *Crutcher v. Eighth Judicial Dist. Court*, 111 Nev. 1286, 1289, 903 P.2d 823, 825 (1995).

The record demonstrates that on April 29, 2013, the State filed an amended indictment and a notice of habitual criminality in open court, the parties filed a guilty plea agreement in open court, the guilty plea agreement included a stipulation "to large habitual criminal treatment," the district court canvassed McCoy and accepted his guilty plea, the district court admitted certified copies of McCoy's prior judgments of conviction into evidence, and McCoy agreed to proceed with sentencing on that same day. Based on this record, we conclude that McCoy has failed to demonstrate the district court lacked jurisdiction to sentence him under the habitual criminal statutes.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²To the extent McCoy argues that the State was required to file its notice of habitual criminality not less than two days before the start of the trial, we note that this requirement did not exist prior to January 1, 2014, when the 2013 amendments to NRS 207.016 went into effect. See 2013 Nev. Stat., ch. 293, § 46, at 1380.

cc: Hon. Carolyn Ellsworth, District Judge
Darren Lamont McCoy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk