

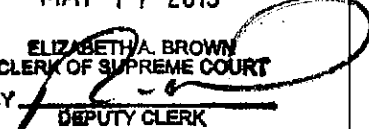
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN H. ROSKY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77171-COA

FILED

MAY 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

John H. Rosky appeals from a district court order denying a motion to correct an illegal sentence.¹ Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Rosky claimed his sentence for sexual assault of a minor under the age of fourteen was illegal because the grand jury indictment was deficient, the jury instructions were inadequate, the district court did not identify the specific sentencing statute when pronouncing his sentence, his retrial was barred by the Double Jeopardy Clause, and therefore the district court lacked jurisdiction to impose the sentence.

NRS 176.555 states a district "court may correct an illegal sentence at any time." A motion to correct an illegal sentence, however,

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

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 P.2d 321, 324 (1996). “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.” *Id.* (internal quotation marks omitted).


Even assuming that Rosky’s indictment and double-jeopardy claims implicate the jurisdiction of the district court to impose a sentence and therefore fall within the narrow scope of claims permissible in a motion to correct an illegal sentence, we conclude they lack merit. The grand jury indictment satisfied the requirements of NRS 173.075, see *Laney v. State*, 86 Nev. 173, 178-79, 466 P.2d 666, 669-70 (1970), and we have previously rejected Rosky’s double-jeopardy claim, see *Rosky v. Warden*, Docket No. 75209 (Order Denying Petition, May 22, 2018).

Rosky’s remaining claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence because they did not implicate the jurisdiction of the district court. See Nev. Const. art 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)). We note that Rosky’s sentence is facially legal. See NRS 200.366(3)(b)(1) (1999); *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081

(2008) (“[T]he proper penalty is the penalty in effect at the time of the commission of the offense.”). And we conclude the district court did not err by denying Rosky’s motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Elliott A. Sattler, District Judge
John H. Rosky
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We have reviewed all documents Rosky has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Rosky has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.