

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ROBERT BEST,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77736-COA

FILED

JUN 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Robert Best appeals from an order of the district court denying a motion to modify or correct an illegal sentence.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Best argues the district court erred by denying his April 12, 2018, motion. NRS 176.555 states a district “court may correct an illegal sentence at any time.” A motion to correct an illegal sentence, however, 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).

In his motion, Best claimed his sentence was illegal because the sentencing court was required, pursuant to NRS 201.180, to impose a

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


minimum term of two years for each of his counts of incest, but instead imposed consecutive ten-year-minimum terms. Best based his claim upon *Botts v. State*, 109 Nev. 567, 568, 854 P.2d 856, 857 (1993), which explained that a sentencing court did not have discretion to impose a sentence for sexual assault of a child under the age of 14 at variance with the relevant sentencing statute.


We conclude the district court properly denied Best's claim. NRS 201.180 provides that the punishment for incest shall be a prison sentence "for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole." The statute's plain language requires a maximum term of life in prison but affords the district court discretion in setting the minimum term so long as that term is not less than two years. *See McNeill v. State*, 132 Nev. 551, 555, 375 P.3d 1022, 1025 (2016) (stating "when a statute is clear on its face, a court cannot go beyond the statute in determining legislative intent"); *Miller v. State*, 113 Nev. 722, 726-27, 941 P.2d 456, 459 (1997) (contrasting a statute requiring a specific sentence with other sentencing statutes that provided for a minimum term of "not less than" a specific number of years and a maximum term of "not more than" a specific number of years and thereby allowed for some variation in the sentencing range). The sentence imposed in this case, which included two minimum terms of 10 years, was within the parameters provided by NRS 201.180. Accordingly, Best failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction to impose sentence. Therefore, the district court did not err by denying this claim.


In addition, Best argued the district court judges and the State committed misconduct. Best also appeared to assert the sentencing court improperly imposed consecutive terms. These claims fell outside the

narrow scope of claims permissible in a motion to correct an illegal sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. In addition, Best's claims fell outside of the scope of claims permissible in a motion to modify sentence. *See id.* Therefore, we conclude the district court did not err by denying the motion.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Steve L. Dobrescu, District Judge
David Robert Best
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk

²Best argues the district court denied his motion because it was biased against him. However, "rulings and actions of a judge during the course of official judicial proceedings do not establish" bias sufficient to disqualify a district court judge. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988).