

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE W. LUSTER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79311-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

George W. Luster, Jr. appeals from an order of the district court denying a motion to correct an illegal sentence filed on May 17, 2019. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

In his motion, Luster claimed that the district court lacked jurisdiction to sentence him because a district court judge not assigned to his case dismissed the jury after the verdict and ordered that his penalty phase be held in front of the assigned district court judge.

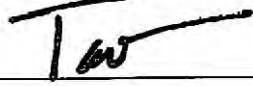
“An illegal sentence [is] one at variance with the controlling sentencing statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided.” *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (internal quotation marks omitted). “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).

First, the alleged error complained of by Luster occurred prior to the imposition of sentence; therefore, this claim was not properly raised in this motion. Second, Luster failed to demonstrate the sentencing judge

acted without jurisdiction. As found by this court in a previous order, Luster stipulated on the record to being sentenced by a judge rather than the jury. *See Luster v. State*, Docket No. 74479-COA (Order of Affirmance, October 25, 2018). The fact that a judge other than the trial judge accepted that stipulation did not deprive the court of jurisdiction. *See Nev. Const. art. 6, § 6; NRS 171.010*. Therefore, Luster failed to demonstrate the district court lacked jurisdiction or that his sentence was illegal. Accordingly, we conclude the district court did not err by denying Luster's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
George W. Luster, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk