

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES WRIGHT, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79406-COA

FILED

MAY 26 2020

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY Chapman
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

James Wright, Jr., appeals from a district court order denying a motion to correct an illegal sentence filed on May 24, 2019. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Wright claims the district court erred by denying his motion. A motion to correct an illegal sentence may address only 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.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)).

The district court found that Wright was convicted of a felony and he had been convicted of three prior felonies. The district court therefore concluded that Wright was lawfully sentenced as a habitual criminal and punished for a category A felony under NRS 207.010(1)(b).


The district court further concluded Wright's sentence of life without the possibility of parole did not exceed the maximum sentence permitted, *see* NRS 207.010(1)(b)(1), and denied the motion.

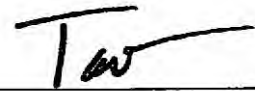
Wright acknowledges that he was adjudicated as a habitual criminal, but asserts that his sentence of life without the possibility of parole exceeds the maximum sentence that could have been imposed upon him because he was convicted of a category B felony. He argues that NRS 207.010 "does not change a category B felony into a category A felony, but simply provides for a harsher punishment for a category B felony and other harsher punishments for a category A felony, due to one's aggravated status." He asserts that because he was convicted of a category B felony, he could only be adjudicated as a habitual criminal under NRS 207.010(1)(a), which provides for a maximum sentence of 5 to 20 years in prison.

Contrary to Wright's assertion, NRS 207.010 does not limit sentencing under subsection (1)(b) to only those convicted of category A felonies. NRS 207.010(1)(b) specifically provides that a person convicted of "*any felony*" and who "has previously been three times convicted" of a felony may be adjudicated a habitual criminal and shall be punished "for a category A felony." (Emphasis added.) Interpreting NRS 207.010(1)(b) to apply to only those who were convicted of a category A felony, as urged by Wright, would be inconsistent with the plain language of the statute. *See Washoe Med. Ctr. v. Second Judicial Dist. Ct. of State of Nev. ex rel. Cty. Of Washoe*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-93 (2006) ("When a statute is clear on its face, we will not look beyond the statute's plain language."). Because Wright was properly adjudicated a habitual criminal under NRS

207.010(1)(b) and his sentence does not exceed the maximum sentence permitted under NRS 207.010(1)(b)(1), we conclude the district court did not err by denying Wright's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
James Wright, Jr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk