

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC PAUL SCHACHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84547-COA

FILED

SEP 04 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Marc Paul Schachter appeals from an order of the district court denying a motion to modify and/or correct an illegal sentence filed on June 11, 2021. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

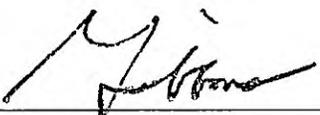
Schachter first claimed the sentencing court did not have jurisdiction to issue a corrected judgment of conviction on July 30, 2015, because at that time, Schachter's appeal from his judgment of conviction was pending before the Nevada Supreme Court. A sentence is facially illegal where either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The parties had agreed that Schachter's original sentence was illegal and should be corrected. However, once an appeal has been filed, the "district judge lacks jurisdiction over a case until the remittitur is issued." *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

Because the remittitur had not yet issued for Schachter's appeal from his original judgment of conviction when the sentencing court issued the corrected judgment of conviction, the sentencing court did not have jurisdiction to issue the corrected judgment of conviction. Accordingly,

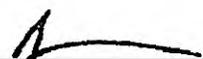
we reverse the district court's decision denying this claim, and we remand this matter to the district court to vacate the corrected judgment of conviction filed on July 30, 2015, and to reissue the judgment following the supreme court's issuance of remittitur in this case.¹

Schachter also claimed that the issuance of the corrected judgment of conviction nunc pro tunc was improper and that he should not have been adjudicated a habitual criminal. These claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, without considering the merits of these claims, we conclude the district court did not err by denying them. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹The district court concluded this claim was moot because, in its affirmance of Schachter's original judgment of conviction, the Nevada Supreme Court stated that the corrected judgment of conviction rendered moot Schachter's claim challenging his original sentence. *See Schachter v. State*, No. 67673, 2016 WL 4445661, at *1 n.1 (Nev. Aug. 10, 2016) (Order of Affirmance). However, the Nevada Supreme Court did not address whether the sentencing court had jurisdiction to enter its corrected judgment of conviction. Therefore, we conclude the district court erred by rejecting Schachter's jurisdictional argument as moot.

cc: Hon. Connie J. Steinheimer, District Judge
Marc Paul Schachter
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk