

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BINH MINH CHUNG, A/K/A BEN
MINH CHUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85774-COA

FILED

SEP 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Binh Minh Chung appeals from an order of the district court denying a motion to correct illegal sentence filed on June 30, 2022. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In his motion and supporting memorandum, Chung challenged the validity of the statutes pursuant to which he was sentenced. He claimed that the relevant sentencing statutes were repealed in 1957 and that his sentences are necessarily at variance with the controlling statutes because, as a result of the aforementioned repeal, there are no controlling statutes. Based on this, Chung reasoned that the district court lacked jurisdiction. A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the sentence was imposed in excess of the statutory maximum or the district court was without jurisdiction to impose the sentence. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Chung's challenge to the validity of his sentencing statutes fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Notably, Chung did not seek merely to correct his sentences but rather sought to have them vacated. And he failed to demonstrate that the district court lacked jurisdiction to sentence him. See

Nev. Const. art. 6, § 6; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)); *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) (stating “[s]ubject matter jurisdiction is the court’s authority to render a judgment in a particular category of case” (internal quotation marks omitted)); see also 1957 Nev. Stat., ch. 2, § 1 at 1 (adopting and enacting the Nevada Revised Statutes). Therefore, we conclude the district court did not err by denying the motion.

Chung also makes the following claims on appeal. First, Chung claims the district court erred by considering the State’s untimely opposition and for failing to timely file its written order. Because we conclude Chung’s motion did not entitle him to relief, any errors concerning these issues were harmless. See NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, we conclude Chung is not entitled to relief based on these claims.

Second, Chung claims the district court erred by failing to address each of his claims. We conclude that the district court’s order was sufficient to allow this court to properly review Chung’s claims and, as discussed previously, the district court properly denied Chung’s motion. Therefore, we conclude Chung is not entitled to relief based on this claim.

Finally, Chung claims the district court erred by failing to grant him a “fair and full” hearing on his motion. Chung avers that the district court denied him the ability to present evidence and to fully argue his position and that it heard no argument from the State. During the hearing on his motion, the district court stated it had read everything and that the

numerous exhibits Chung attached to his motion would be made a part of the record. After hearing Chung's arguments, the district court concluded that it did not need to hear from the State because Chung failed to meet his burden of demonstrating that his sentences are facially illegal.

On appeal, Chung fails to describe what additional evidence or argument he would have presented in support of his motion. Because Chung's motion did not entitle him to relief, and because he fails to describe what additional evidence or arguments the district court prevented him from presenting at the motion hearing, Chung is unable to demonstrate that his inability to present evidence or additional argument affected his substantial rights. *See id.* Therefore, we conclude Chung is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Binh Minh Chung
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk