


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS WRAY HERNDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86597-COA

FILED

OCT 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas Wray Herndon appeals from an order of the district court dismissing a motion to correct illegal sentence filed on March 30, 2023. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

In his motion, Herndon claimed the sentencing court did not have jurisdiction to impose his sentence. Herndon appeared to claim that NRS 171.010 is the sole source of the sentencing court's authority to impose a sentence under the Nevada Revised Statutes and that the "statutory source law" of NRS 171.010, section 58 of the Criminal Practice Act of 1911, was repealed in 1957 as part of Senate Bill 2.

A motion to correct an illegal sentence 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). Herndon did not allege that his sentence exceeded the statutory maximum.

Further, Herndon failed to demonstrate that the sentencing court lacked jurisdiction to impose his sentence. While the laws in effect prior to 1957 were repealed in 1957, they were simultaneously reenacted as

the Nevada Revised Statutes in the same senate bill. *See* 1957 Nev. Stat., ch. 2, §§ 1, 3, at 1-2. And the simultaneous repeal of NRS 171.010's source law would not have affected its validity. *See* 1957 Nev. Stat., ch. 2, § 4(2), at 2 ("The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act."). Therefore, we conclude the district court did not err by dismissing Herndon's motion.

On appeal, Herndon argues the district court knowingly and willfully mischaracterized his claims as outside the scope of a motion to correct an illegal sentence, thereby violating the Nevada Code of Judicial Conduct. To the extent the district court mischaracterized Herndon's claims, Herndon fails to demonstrate any such mischaracterizations were made knowingly or willfully. And as previously discussed, the district court properly dismissed Herndon's motion. Therefore, we conclude Herndon is not entitled to relief on this claim. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Thomas Wray Herndon
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk