


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JON PAUL MCINNES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86671-COA

FILED
NOV 14 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jon Paul McInnes appeals from a district court order denying a motion to correct an illegal sentence filed on January 13, 2023, and related pleadings.¹ Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

McInnes argues the district court erred by denying his motion to correct an illegal sentence without first conducting an evidentiary hearing. In his motion, McInnes claimed the district court lacked jurisdiction to impose his sentence. In particular, McInnes contended that (1) NRS 171.010 is “foundationally deficient” because its statutory source law was repealed in 1957 as part of Senate Bill 2; (2) the Nevada Revised Statutes, including his sentencing statutes, do not constitute “valid binding law” because they have no connection to the Statutes of Nevada; and (3) NRS 220.120 (regarding the compilation, organization, revision, and publication of the Nevada Revised Statutes) and NRS 220.170 (regarding the certification and citation of the Nevada Revised Statutes) are “null and

¹McInnes filed (1) a “motion to take judicial notice” on March 7, 2023; (2) a “motion to take judicial notice for enlargement of copywork” on March 14, 2023; (3) a “motion for default judgment” on March 27, 2023; and (4) a “motion to take judicial notice for failure of the court and clerk of the court to file defendant’s documents” on April 4, 2023.

void” because their statutory source law was also repealed in 1957 as part of Senate Bill 2 and because they were improperly enacted by “amendment.”

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). To warrant an evidentiary hearing, a defendant must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the defendant to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

McInnes did not allege that his sentence exceeded the statutory maximum, and McInnes failed to allege facts indicating the district court was without 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 any source law would not have affected a statute’s 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.”).

Moreover, claims challenging the validity of NRS 220.120, NRS 220.170, or a defendant’s sentencing statutes do not implicate the district court’s jurisdiction to impose a defendant’s sentence. *See* Nev. Const. art. 6, § 6(1); *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) (“Subject matter jurisdiction is the court’s authority to render a judgment in a particular category of case.” (internal quotation marks omitted)). Accordingly, we

conclude the district court did not err by denying McInnes' motion without conducting an evidentiary hearing.

On appeal, McInnes argues the district court intentionally mischaracterized his claims by stating (1) he argued the Nevada Revised Statutes had not been properly enacted, and (2) he argued the Nevada Revised Statutes were invalid because members of the Nevada Supreme Court sat on the statutory revision committee. After review, we conclude McInnes failed to demonstrate the district court mischaracterized his claims or that any mischaracterization was intentional. Therefore, we conclude McInnes is not entitled to relief based on this claim.

McInnes also argues the district court was biased against him. McInnes has not demonstrated that the district court's actions were based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167

(2023). Therefore, we conclude McInnes is not entitled to relief based on this claim.

McInnes also argues the district court erred by denying his additional pleadings related to his motion to correct an illegal sentence. In these pleadings, McInnes claimed his due process rights were violated because the district court failed to schedule or hold a hearing on his motion, failed to act on his motion, and failed to file other documents related to his motion. McInnes also claimed he had reached his financial limit at Lovelock Correctional Center and could no longer make copies of his litigation. As previously discussed, the district court properly denied McInnes' motion to correct an illegal sentence without conducting an evidentiary hearing. Therefore, we conclude McInnes is not entitled to relief based on this claim. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Jon Paul McInnes
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk