


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD F. MILEWSKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86555-COA

FILED

NOV 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard F. Milewski appeals from an order of the district court denying a motion to correct an illegal sentence filed on February 3, 2023. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

In his motion and supporting memorandum, Milewski sought to vacate his sentences because he alleged the sentencing court lacked jurisdiction to impose them. Milewski claimed that the relevant sentencing statutes were repealed in 1957, are “non-constitutional” with no actual connection to the Statutes of Nevada, and lack enacting clauses. Milewski alleged that, as a result, his sentences are necessarily at variance with the controlling statutes. Milewski also argued that previous Nevada Supreme Court cases stating that the Nevada Revised Statutes do not have to have enacting clauses has been proven false by his analysis of the 1957 repeal of the laws of Nevada.

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).

Milewski did not allege that his sentence exceeded the statutory maximum, and Milewski 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 While the laws in effect prior to 1957 were repealed in 1957, they were simultaneously reenacted as the Nevada Revised Statutes in the same senate bill.¹ See 1957 Nev.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by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.").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 171.010 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)).

Finally, the Statutes of Nevada contain the constitutionally mandatory enacting clauses, see 1957 Nev. Stat., ch. 2, § 1 at 1 (NRS 171.010); 1977 Nev. Stat., ch. 598, §§ 2, at 1626 (NRS 200.366); 1983 Nev. Stat., ch. 55 § 4 at 205, 207 (NRS 201.230), and NRS 220.110 does not mandate that the enacting clauses be republished in the Nevada Revised

¹Milewski specifically challenges NRS 171.010, NRS 200.366, and NRS 201.230. We note that NRS 200.366 was added in 1977, and thus, it is not implicated in Milewski's argument regarding the 1957 repeal.

Statutes. Further, Milewski failed to demonstrate that prior Nevada Supreme Court cases have been proven incorrect by his arguments regarding the 1957 repeal of the laws of Nevada.² Therefore, we conclude the district court did not err by denying Milewski's motion.

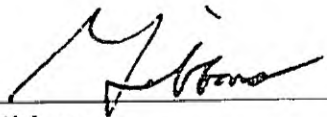
On appeal, Milewski argues that the district court erred by denying his motion for default judgment and motion to strike the State's opposition to his motion to correct an illegal sentence. Milewski argues that the State had seven days to file its opposition to his motion under EDCR 3.20 and that the State filed its opposition more than a month past that time. Thus, he argues he was entitled to have his motion granted and the State's opposition stricken.

Effective June 10, 2022, the Eighth Judicial District Court rules no longer require an opposing party to file an opposition to a motion within seven days after service of the motion in a criminal proceeding. *See* EDCR 3.20. Although the District Court Rules require an opposing party to file an opposition to a motion in a criminal case within 14 days after service of the motion, *see* DCR 13(3), the district court granted the State additional time to file its opposition. Further, while the district court is allowed to grant a motion based on an opposing party's failure to oppose it, the district court is not required to do so. *See id.* Thus, Milewski fails to demonstrate the

²Neither this court nor the district court can overrule Nevada Supreme Court precedent. *See People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (quotation marks and internal punctuation omitted)); *see also Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing *stare decisis* "applies *a fortiori* to enjoin lower courts to follow the decision of a higher court").

district court erred by denying his motion for default judgment or his motion to strike the State's opposition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Monica Trujillo, District Judge
Richard F. Milewski
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³The Honorable Deborah L. Westbrook did not participate in the decision in this matter.