

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENJAMIN D. FARREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86468-COA

FILED

DEC 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Benjamin D. Farrey appeals from an order of the district court denying a motion to correct an illegal sentence filed on January 4, 2023, and several related motions. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The district court first denied Farrey's motion to correct an illegal sentence. In that motion and supporting memorandum, Farrey sought to vacate his sentences because he alleged the sentencing court lacked jurisdiction to impose them. Specifically, he claimed that Senate Bill 2 from 1957, which adopted the Nevada Revised Statutes, was not properly passed; the Legislature improperly delegated its power to the Statute Revision Committee and the Legislative Counsel Bureau; there is a conflict between Senate Bill 2 from 1957 and NRS 220.170; NRS 171.010 lacks any statutory source within the Statutes of Nevada; and prior decisions of the Nevada Supreme Court have been proven incorrect regarding whether the Nevada Revised Statutes are prima facie evidence 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). And such a motion “presupposes a valid conviction.” *Id.* (quotation marks omitted).

Although Farrey purports to challenge the district court’s jurisdiction only insofar as it pertains to his sentencing, his arguments implicate the validity of Nevada’s entire statutory scheme and, thus, the validity of his conviction. Therefore, Farrey’s claims are outside the scope of claims allowed in a motion to correct illegal sentence, and we conclude the district court did not err by denying Farrey’s motion.

The district court also denied Farrey’s motion to strike the State’s opposition to his motion to correct an illegal sentence and his motion for default judgment. In those motions, Farrey argued that the State had seven days to file its opposition to his motion under EDCR 3.20 and that the State filed its opposition one day late. Thus, he argued he was entitled to have the State’s opposition stricken and his motion for default judgment granted.

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. The general 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. DCR 13(3). Thus, the State’s opposition was timely filed, and we conclude the district court did not err by denying Farrey’s motion to strike and motion for default judgment.

Next, the district court denied Farrey’s motion for enlargement of time to respond to the State’s opposition to his motion to correct as moot. Because Farrey was able to file his reply to the State’s opposition prior to

the hearing on his motion, we conclude the district court did not err by denying this motion as moot.

Finally, the district court denied Farrey's request for oral argument on his motion. The district court denied the request because it found oral argument was not necessary. We conclude the district court did not err by denying this request. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen E. Delaney, District Judge
Benjamin D. Farrey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk