

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEY MAYEN BURTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86921-COA

FILED

JAN 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Key Mayen Burton appeals from an order of the district court denying a “motion to correct illegal sentence by fraudulent contract, charging document, judgment of conviction, and plea deals” filed on April 5, 2023. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In his motion, Burton sought to have his case dismissed because three Nevada Supreme Court justices served on the Statute Revision Committee, which he asserts violated the judicial code of conduct and *Marbury v. Madison*, 5 U.S. 137 (1803). He also claimed Senate Bill 182 (1951) was defective. 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).

Burton’s claims challenged the validity of his conviction. Therefore, Burton’s claims are outside the scope of claims allowed in a motion to correct an illegal sentence, and without considering the merits of

his claims, we conclude the district court did not err by denying Burton's motion.

On appeal, Burton claims the district court erred by not allowing him to be present at the hearing denying his motion. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely stated its findings on the record. Burton fails to demonstrate that he was prejudiced by his absence at the relevant hearings. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Therefore, Burton fails to demonstrate he is entitled to relief on this claim.

He also claims that Judge Eller should not have ruled on his motion because he argued in it that she committed fraud. Burton did not file a request for recusal in the district court below, *see* NRS 1.235 (stating the procedure for disqualifying a district court judge based on actual or implied bias), and he fails to demonstrate that Judge Eller should have *sua sponte* recused herself, *see* NRS 1.230 (stating the grounds for disqualification of a district court judge); *cf. Jefferson v. State*, 133 Nev. 874, 878-79, 410 P.3d 1000, 1004 (Ct. App. 2017) (providing that a defendant's decision to file an action against counsel is not, alone, sufficient to require disqualification). Therefore, Burton fails to demonstrate he is entitled to relief on this claim.

Finally, he claims that the State was in default because it filed a late opposition to his motion. Burton fails to demonstrate he is 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.");

DCR 13(3) (allowing, but not requiring, the district court to grant a motion where the opposition is untimely filed). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Key Mayen Burton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk