


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY EDWARD PETTY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87036-COA

FILED

FEB 27 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Edward Petty appeals from an order of the district court denying a motion to correct an illegal sentence filed on June 21, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, Petty claimed the district court lacked jurisdiction to sentence him because, prior to trial, defense counsel questioned his competency and the trial court agreed a competency examination was in his best interest. Petty claimed the examination was never done and his case proceeded to trial when the proceedings should have been stayed pursuant to NRS 178.405(1).

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). Although Petty purported to challenge the district court's jurisdiction only insofar as it pertains to his sentencing, his arguments implicate the validity of his conviction. His claim challenged an alleged

error that occurred prior to the imposition of sentence and was, therefore, not properly raised in a motion to correct an illegal sentence. *See id.* (“A motion to correct an illegal sentence presupposes a valid conviction . . . [and] cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing.” (internal quotation marks and citation omitted)); *accord State v. Donaldson*, 355 P.3d 689, 693-94 (Kan. 2015) (recognizing a defendant may not use a motion to correct an illegal sentence to challenge a district court’s purported failure to suspend criminal proceedings and conduct a competency hearing). Therefore, Petty’s claim was outside the scope of a motion to correct an illegal sentence, and we conclude the district court did not err by denying the motion.

On appeal, Petty argues the district court erred by denying his motion to correct an illegal sentence at a hearing where it allowed the State to present argument and he was not present. Even assuming this was error, we conclude that Petty fails to demonstrate his substantial rights were violated because his claim was outside the scope of a motion to correct an illegal sentence. *See* NRS 178.598 (“Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.”).

Petty also argues the district court erred by failing to include specific findings of fact and conclusions of law in the order denying his motion to correct an illegal sentence. “If a motion to correct an illegal sentence or to modify a sentence raises issues outside of the very narrow scope of the inherent authority recognized in this Opinion, the motion should be summarily denied.” *Edwards*, 112 Nev. at 708 n.2, 918 P.2d at 325 n.2. Because the claim raised in Petty’s motion was outside the scope

of a motion to correct an illegal sentence, we conclude the district court did not err by summarily denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Anthony Edward Petty
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Michael Gibbons, Chief Judge, did not participate in the decision in this matter.