

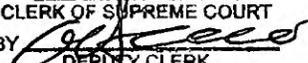
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85694-COA

**FILED**

OCT 11 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cesar Sanchaz Valencia appeals from an order of the district court denying a motion to correct an illegal sentence filed on August 25, 2022. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

In his motion, Valencia claimed the district court lacked jurisdiction to sentence him under the habitual criminal statute because the State did not file an amended information including a count of habitual criminal but rather filed a notice of intent to seek punishment as a habitual criminal. 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). “A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.” *Id.* (internal quotation marks omitted).

Valencia’s claim did not implicate the jurisdiction of the district court, *see* Nev. Const. art. 6, § 6(1); NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (stating “the term jurisdiction means . . . the

courts' statutory or constitutional *power* to adjudicate the case" (internal quotation marks omitted)). Further, Valencia's claim challenged actions that occurred prior to the imposition of sentence. Thus, the claim was outside the scope of a motion to correct an illegal sentence. Accordingly, without reaching the merits of his claim, we conclude that the district court did not err by denying the motion.

Next, Valencia argues on appeal that he is appealing from an order of the district court denying a motion to show cause. Because no statute or court rule permits an appeal from an order denying a motion to show cause, we lack jurisdiction to consider this portion of Valencia's appeal. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

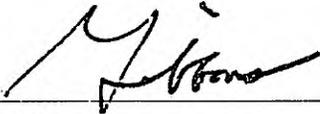
Valencia also argues on appeal that the district court erred by denying his motion to appoint counsel to represent him on his motion to correct an illegal sentence. No statute or court rule allows for the appointment of counsel for a motion to correct an illegal sentence. Therefore, Valencia fails to demonstrate the district court erred by denying his motion to appoint counsel.

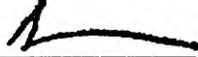
Valencia also argues on appeal that the district court failed to give him an opportunity to reply to the State's response to his motion. Because Valencia's claim was outside the scope of a motion to correct an illegal sentence, he failed to demonstrate his substantial rights were violated by his inability to reply to the State's response. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Thus, Valencia fails to demonstrate he is entitled to relief on this claim.

Finally, Valencia argues the district court erred by not allowing him to be present at the hearing denying his motion. "[A] defendant does

not have an unlimited right to be present at every proceeding.” *Gallego v. State*, 117 Nev. 348, 367, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 263 P.3d 235 (2011). At the hearing denying his motion, the district court merely stated its findings on the record, and Valencia fails to demonstrate that he was prejudiced by his absence. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002). Therefore, Valencia fails to demonstrate he is entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Bita Yeager, District Judge  
Ceasar Sanchaz Valencia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk