IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN LOPEZ A/K/A KEVIN JOSEPH LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43285

FILED

OCT 0 7 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 12, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of forty-eight to one hundred and twenty months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.[1]

On November 21, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 24, 2004, the district court

---

[1]Lopez v. State, Docket No. 40304 (Order Affirming in Part and Remanding in Part to Correct Judgment of Conviction, December 31, 2002). The judgment of conviction was amended on January 14, 2003, to reflect that appellant was convicted pursuant to a jury verdict and not a guilty plea as was stated in the original judgment of conviction.

SUPREME COURT
OF
NEVADA

(O) 1947A

04-18585

denied the petition. This court affirmed the district court's order on appeal.[2]

On April 5, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 28, 2004, the district court denied the motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was improperly applied in his case. Specifically, appellant claimed that a knife was not used during the robbery.

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.[3] "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.'"[4] A motion to correct an illegal sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[5]

Our review of the record on appeal reveals that the district court properly denied appellant's motion. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court

---

[2]Lopez v. State, Docket No. 42904 (Order of Affirmance, September 17, 2004).

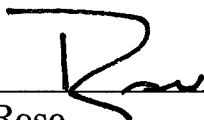[3]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

[4]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).
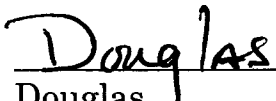
[5]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

was without jurisdiction in the instant case.[6]   To the extent that appellant's motion may be construed to request modification of his sentence, appellant failed to demonstrate that his sentence was based upon a material mistake of fact about his criminal record that worked to his extreme detriment.[7] The jury found appellant guilty of using a deadly weapon during the commission of a robbery.   Thus, the district court properly sentenced appellant pursuant to NRS 193.165 (the deadly weapon enhancement).   Appellant's challenge to the sufficiency of the evidence is improperly raised in a motion to correct or modify a sentence. Therefore, we affirm the order of the district court.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

---

[6]See NRS 200.380; NRS 193.165.

[7]Edwards, 112 Nev. at 708, 918 P.2d at 324.

[8]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Kevin Lopez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk