

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUFUS RONALD MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44119

FILED

JUN 13 2005

[Signature]
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 and vacate judgment. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On April 16, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of twenty-four to sixty months in the Nevada State Prison.¹ No direct appeal was taken.

On September 15, 2003, appellant filed a proper person petition for a writ of habeas corpus in the district court. The district court appointed counsel to assist appellant, and counsel filed a supplement to the petition. On February 11, 2004, the district court entered an order dismissing the petition pursuant to a motion made by appellant to withdraw the petition.

¹On April 28, 2003, the district court entered a corrected judgment of conviction clarifying a mistake in the original judgment of conviction. Specifically, the original judgment of conviction omitted the equal and consecutive term imposed pursuant to NRS 193.165. The district court corrected the judgment to reflect that appellant was to serve two consecutive terms of twenty-four to sixty months.

On March 24, 2004, appellant filed a proper person motion to correct an illegal sentence and vacate the judgment in the district court. The State opposed the motion. Appellant filed a reply. On October 8, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was improperly applied because he did not use his vehicle in a threatening manner.

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.² "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.'"³

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.⁴ Further, appellant failed to establish that the district court lacked jurisdiction to impose a sentence in this case. Appellant pleaded guilty to robbery with the use of a deadly weapon, and appellant admitted to the facts supporting the deadly weapon enhancement. Thus, the

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


³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁴See NRS 200.380(2) (providing for a minimum term of not less than two years and a maximum term not greater than fifteen years); NRS 193.165 (providing for an equal and consecutive sentence when a deadly weapon is used during the commission of a crime).


district court was permitted to impose the deadly weapon enhancement.⁵ Appellant may not challenge the validity of his guilty plea in a motion to correct an illegal 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Gibbons

⁵See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Second Judicial District Court Dept. 9, District Judge
Rufus Ronald Martin
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk