

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARY JAMES PLUMLEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44537

FILED

APR 05 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On November 17, 1992, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole and two consecutive terms of nine years, the latter terms to be served concurrently with the former terms. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ Appellant unsuccessfully sought post-conviction relief.²

On September 12, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State

¹Plumlee v. State, Docket No. 24089 (Order Dismissing Appeal, April 27, 1995).

²Plumlee v. State, Docket No. 31785 (Order Dismissing Appeal, November 18, 1999).

opposed the motion. Appellant filed a reply. On December 30, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court did not have jurisdiction to sentence him because a separate penalty hearing with the participation of a jury was not conducted. Specifically, appellant claimed that NRS 175.552 required the district court to conduct a separate penalty hearing in front of a jury in a first degree murder case and because that was not done, he requested a new penalty hearing.

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

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.⁵ Further, appellant's claim that the district court lacked jurisdiction to sentence him lacked merit. At the time appellant committed his crime and at the time that he was convicted, a separate

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


⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁵1989 Nev. Stat., ch. 631, § 1, at 1451.

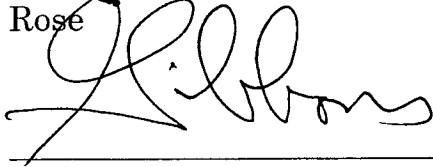
penalty hearing was not required in a non-capital murder case.⁶ Thus, we affirm the order of the district court.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Gibbons

cc: Hon. Robert H. Perry, District Judge
Lary James Plumlee
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Kazalyn v. State, 108 Nev. 67, 77, 825 P.2d 578, 584 (1992); McCabe v. State, 98 Nev. 604, 607, 655 P.2d 536, 537-38 (1982). In 1993, after appellant was convicted, the legislature amended NRS 175.552 to require a separate penalty hearing regardless of whether the death penalty was sought. 1993 Nev. Stat., ch. 182, § 1, at 322. This amendment was applicable only to defendants who were tried for murder after October 1, 1993. 1993 Nev. Stat., ch. 182, § 4, at 323.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).