

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO IBARRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44592

FILED

APR 06 2005

ORDER OF AFFIRMANCE

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

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; Jennifer Togliatti, Judge.

On April, 1, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery, one count of burglary, one count of robbery with the use of a deadly weapon, one count of second degree kidnapping with the use of a deadly weapon, and one count of attempted robbery with the use of a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling thirteen to forty years in the Nevada State Prison. No direct appeal was taken.

On December 17, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court.¹ The State opposed the motion. On January 18, 2005, the district court denied appellant's motion. This appeal followed.

¹The motion was labeled, "motion to amend judgment of conviction and vacate and dismiss illegal sentences."

In his motion, appellant contended that he received ineffective assistance of trial counsel and that his sentences should not have been enhanced because the issue of the deadly weapon was not presented to a jury to be decided beyond a reasonable doubt.

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. The sentences were facially legal.⁴ There is no indication in the record that the district court was without jurisdiction. Because appellant entered a guilty plea to the primary offenses and the deadly weapon enhancements, appellant waived his right to have the issue of the deadly weapon decided by a jury.⁵ Therefore, we affirm the order of the district court.

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

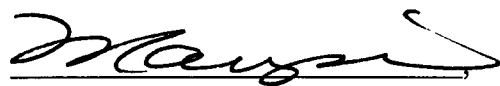
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

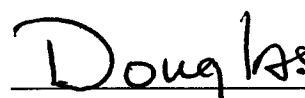
⁴See NRS 193.330; NRS 193.165; NRS 199.480; NRS 200.330; NRS 200.380; NRS 205.060.

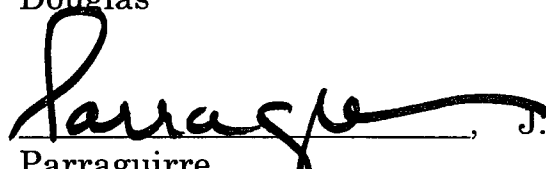
⁵See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

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

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Ricardo Ibarra
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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.