IN THE SUPREME COURT OF THE STATE OF NEVADA

REX ALVIN JIMERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44593

FILED

APR 22 2005

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; John S. McGroarty, Judge.

On May 22, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of thirty-six to ninety-six months in the Nevada State Prison. No direct appeal was taken.

On December 14, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On January 11, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court unconstitutionally enhanced his sentence because there was no finding by a jury that he used a deadly weapon. Appellant maintained that he entered a guilty plea only to the crime of voluntary manslaughter and that he did not waive his right to a jury trial on the issue of the deadly weapon enhancement.

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.[1] "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.'"[2]

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal.[3] Appellant entered a guilty plea to the crime of voluntary manslaughter with the use of a deadly weapon. Appellant admitted to the facts supporting the deadly weapon enhancement. Thus, the district court was permitted to impose the deadly weapon enhancement.[4] There is no indication that the district court was without jurisdiction to impose a sentence upon appellant. 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.

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

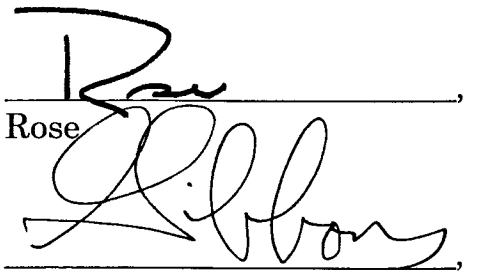
[2]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[3]See NRS 200.080 (setting forth the penalty for voluntary manslaughter); NRS 193.165 (deadly weapon enhancement).

[4]See 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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

cc: Hon. John S. McGroarty, District Judge
Rex Alvin Jimerson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[6]We 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.