IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD W. MORRISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44638

FILED

MAY 27 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Ronald Morrison's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On August 6, 2002, the district court convicted Morrison, pursuant to a guilty plea, of attempted robbery with the use of a deadly weapon. The district court sentenced Morrison to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. The district court suspended Morrison's sentence and placed him on probation for a period not to exceed five years. On February 19, 2003, the district court entered an order revoking Morrison's probation, executing the original sentence, and amending the judgment of conviction to include 252 days' credit. Morrison did not appeal.

On December 17, 2004, Morrison filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Morrison filed a reply. On January 13, 2005, the district court denied Morrison's motion. This appeal followed.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

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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]

In his motion, Morrison contended that his sentence was illegal because the deadly weapon enhancement was not submitted to a jury and proved beyond a reasonable doubt. This claim is outside the scope of a motion to correct an illegal sentence, however. Morrison's sentence fell within the range prescribed by the applicable statutes,[3] and there is nothing in the record to indicate that the district court was without jurisdiction.

As an alternate and independent ground to deny relief, we conclude that Morrison's claim is without merit. Morrison pleaded guilty to attempted robbery with the use of a deadly weapon; in doing so, he specifically waived the right to a jury trial in which the State would be required to prove each element of the offense beyond a reasonable doubt. Morrison's reliance on Apprendi v. New Jersey[4] in support of his claim is misplaced. The statutory maximum for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of facts that

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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 193.165; 193.330; 200.380.

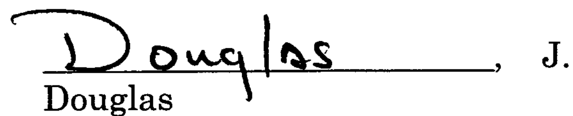
[4]530 U.S. 466 (2000).

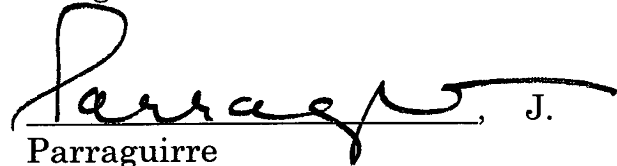
are reflected in the jury verdict or admitted by the defendant.[5] We therefore conclude that the district court did not err in denying Morrison's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Morrison is not entitled to relief and that briefing and oral argument are unwarranted.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, J.
Maupin


_______________, J.
Douglas


_______________, J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Ronald W. Morrison
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[5]See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004).

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