

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CHARLES WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44804

FILED

MAY 27 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 appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On July 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of robbery. The district court sentenced appellant to serve terms totaling 52 to 240 months in the Nevada State Prison. Appellant did not file a direct appeal

On December 28, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 1, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because a jury did not find that a deadly weapon had been used¹ and that his plea was unknowing and involuntary.

¹Stroup v. State, 110 Nev. 525, 874 P.2d 769 (1994); see Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 regarding the illegality of appellant's sentence. The terms for appellant's sentences were facially legal as the district court did not impose a sentence greater than that contemplated by the plea agreement or prescribed by statute.⁴ To the extent that appellant contested the deadly weapon enhancement aspect of his conviction and voluntariness of his plea, we conclude that these claims are outside the scope of a motion to correct an illegal sentence because they are challenges to the validity of his guilty plea, which occurred prior to the imposition of appellant's sentence. As such, the district court did not err in denying appellant's motion in either regard.

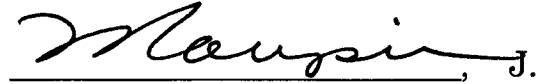
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

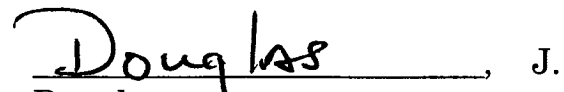
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

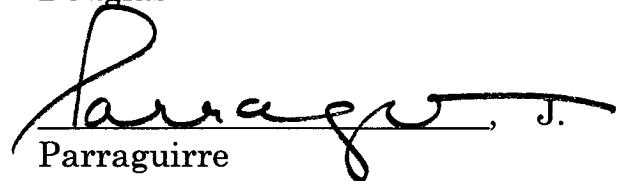
⁴See NRS 200.380 and NRS 193.165.

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.


Maupin


Douglas


Parraguirre

cc: Hon. Jackie Glass, District Judge
Anthony Charles Walker
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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