IN THE SUPREME COURT OF THE STATE OF NEVADA

ORAGE E. HINTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44856

FILED

MAY 2 7 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; Jackie Glass, Judge.

On September 15, 1987, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling forty-five years in the Nevada State Prison. No direct appeal was taken. Appellant unsuccessfully sought post-conviction relief.[1]

On January 10, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion, and appellant filed a reply. On February 23, 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 crimes of robbery.

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[1]Hinton v. State, Docket No. 19148 (Order Dismissing Appeal, August 25, 1988).

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 the motion. Appellant's sentence was facially legal.[4] Appellant pleaded guilty to two counts of robbery with the use of a deadly weapon, and appellant admitted to the facts supporting the deadly weapon enhancements. Thus, the district court was permitted to impose the deadly weapon enhancements.[5] There is no indication that the district court was without jurisdiction. Appellant may not challenge the validity

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

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

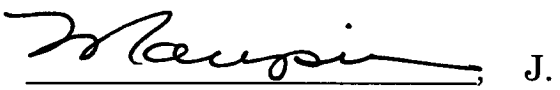
[4]See 1967 Nev. Stat., ch. 211, § 59, at 470-71; 1981 Nev. Stat., ch. 780, § 1, at 2050.

[5]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). Appellant's reliance upon Stroup v. State, 110 Nev. 525, 874 P.2d 769 (1994) is misplaced. Stroup does not require the jury to make such a finding when the defendant has entered a guilty plea to both the primary offense and the enhancement. Id. at 527-28, 874 P.2d at 770-71.

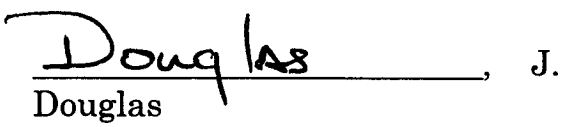
of his guilty plea in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]



_____, J.
Maupin



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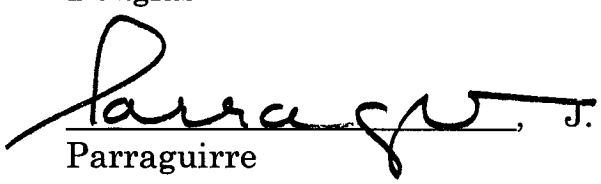
Douglas



_____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Orage E. Hinton
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[7]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.