

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANDRE LEVANT JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44909

FILED

MAY 19 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. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On May 30, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of twenty-four to one hundred and fifty-six months in the Nevada State Prison. No direct appeal was taken.

On December 21, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. On March 3, 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 robbery.

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 robbery with the use of a deadly weapon, and 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.

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


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

³See NRS 200.380 (providing for a minimum term of not less than two years and a maximum term of not more than fifteen years); NRS 193.165 (requiring an equal and consecutive term for the deadly weapon enhancement).

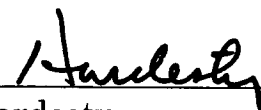
⁴See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original). 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.

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. Steven R. Kosach, District Judge
Deandre Levant Jones
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

⁶We 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.