

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAU DOZIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44972

FILED

JAN 12 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery with the use of a firearm. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Esau Dozier to serve two consecutive prison terms of 72 to 180 months.

Dozier first contends that his guilty plea is invalid because he was not advised about the "40 percent rule" set forth in NRS 193.130(1). We decline to consider Dozier's contention. Generally, this court will not consider a challenge to the validity of the guilty plea on direct appeal from the judgment of conviction.¹ "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."² Here, there is no allegation, or indication in the record on appeal, that Dozer previously raised the issue involving the validity of his guilty in the district court. Accordingly, we

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986); but see Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994).

²Bryant, 102 Nev. at 272, 721 P.2d at 368.

conclude that Dozier must bring his challenge to the validity of the guilty plea in the district court in the first instance.

Dozier next contends that the district court erred at sentencing by imposing a deadly weapon enhancement, pursuant to NRS 193.165, that was equal and consecutive to the actual prison term imposed for the principal offense. In particular, Dozier contends that the penalty he received for the use of a firearm should have been 2-15 years -- the entire, allowable sentencing range for the principal offense of robbery.³ In support of his argument, Dozier notes that NRS 193.165(1) expressly states that the punishment for the use of a deadly weapon shall be imprisonment "for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime." We conclude that Dozier's contention lacks merit.

The language "term of imprisonment prescribed by statute" in NRS 193.165(1) refers to the sentence for the primary offense, within the statutory sentencing range, that is actually imposed by the district court.⁴ In other words, when a deadly weapon is found to be used in the commission of the crime, NRS 193.165(1) mandates that the district court double the defendant's sentence by imposing a prison term for the use of a deadly weapon that is equal and consecutive to the actual prison term imposed for the primary offense.⁵ In this case, the district court, in

³NRS 200.380(2).

⁴See generally NRS 193.130(1) (requiring the district court to sentence a criminal defendant "to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute").

⁵See, e.g., Zgombic v. State, 106 Nev. 571, 576, 798 P.2d 548, 551 (1990), superseded by statute on other grounds by Steese v. State, 114

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accordance with NRS 193.165(1), imposed a consecutive prison term for the use of the firearm that was equal to the sentence imposed for the robbery. Accordingly, we conclude that the district court did not err with respect to the deadly weapon enhancement.

Having Dozier's contention and concluded that either it is not appropriate for review on direct appeal or lacks merit, we

ORDER the judgment of conviction AFFIRMED.⁶

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

... continued

Nev. 479, 960 P.2d 321 (1998) (noting in dicta that deadly weapon enhancement "doubled" the sentence); see also Nevada 1973 Nev. Stat., ch. 759, at 1593 (caption of the deadly weapon statute states legislative intent of "doubling the penalty for the use of a firearm or other deadly weapon in the commission of the crime").

⁶Because Dozier is represented by counsel in this matter, we decline to grant Dozier permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Dozier unfiled all proper person documents that he has submitted to this court in this matter.

cc: Hon. Janet J. Berry, District Judge
Michael V. Roth
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
Esau Dozier