

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS L. DOWNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45110

**FILED**

JUL 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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; Lee A. Gates, Judge.

On December 4, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, three counts of sexual assault with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive life terms plus an additional consecutive forty years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on June 10, 1997.

On March 17, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 6, 2005, the district court denied appellant's motion. This appeal followed.

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<sup>1</sup>Downing v. State, Docket No. 27734 (Order Dismissing Appeal, May 22, 1997).

In his motion, appellant contended that NRS 193.165 is unconstitutional and violates the double jeopardy clause. Appellant therefore argues that the imposition of the deadly weapon enhancements rendered his sentence illegal.

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.<sup>2</sup> "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.'"<sup>3</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. The terms for appellant's sentences were facially legal.<sup>4</sup> Further, there is no indication that the district court was without jurisdiction.

As a separate and independent ground for denying relief, appellant's claim lacks merit. This court has previously held that there is "no conflict between the penalty imposed by NRS 193.165 and the double jeopardy clause of the United States Constitution."<sup>5</sup>

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

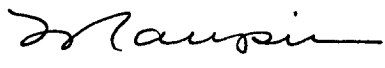
<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

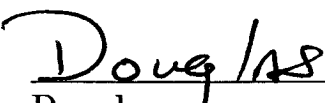
<sup>4</sup>See 1995 Nev. Stat., ch 455, § 1, at 1431; 1995 Nev. Stat., ch 443, § 58, at 1186; 1995 Nev. Stat., ch 443, § 60, at 1187-88; 1995 Nev. Stat., ch 443, § 124, at 1215.

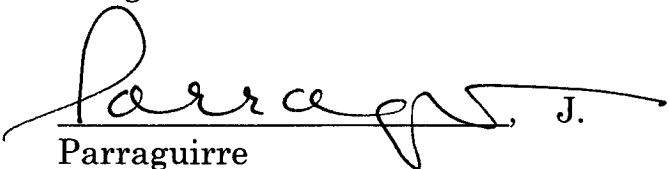
<sup>5</sup>Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987).

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Lee A. Gates, District Judge  
Curtis L. Downing  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>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.