

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYLAND RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45300

FILED

JUL 22 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. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 15, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of ten to twenty-five years in the Nevada State Prison. No direct appeal was taken.

On April 13, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On May 4, 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. He further argued that he did not waive the right to have a jury decide the following aggravating factors: (1) charges not filed; (2) charges that were dismissed; and (3) charges that were to be dismissed pursuant to the guilty plea agreement.

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 pleaded guilty to second degree murder 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 Further, appellant received the sentence that he stipulated to by entry of his guilty plea and nothing in the record supports appellant's contention that the district court relied on any other information to sentence appellant. There is no indication that the district court was without jurisdiction, and appellant may not

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 1995 Nev. Stat., ch. 443, § 44, at 1182; 1995 Nev. Stat., ch. 455, § 1, at 1431.

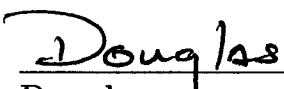
⁴See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

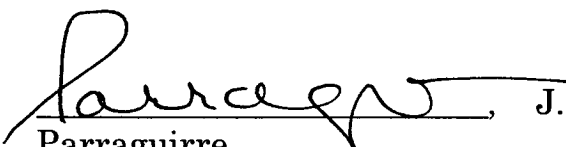
challenge the validity of his guilty plea in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Royland Rodriguez
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).