

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENDREL DECODE POPE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45339

FILED

OCT 25 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; Michael A. Cherry, Judge.

On March 24, 1997, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of forty-three to one hundred and ninety-two months in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction for lack of jurisdiction.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief.<sup>2</sup>

On March 18, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 22, 2005, the district court denied appellant's motion. This appeal followed.

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<sup>1</sup>Pope v. State, Docket No. 32117 (Order Dismissing Appeal, April 20, 1998).

<sup>2</sup>Pope v. State, Docket No. 38718 (Order of Affirmance, July 16, 2002); Pope v. State, Docket No. 32271 (Order of Affirmance, May 30, 2001).

In his motion, appellant contended that the district court unconstitutionally enhanced his sentences 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 primary offense, attempted murder, and that he did not waive his right to a jury trial on the issue of the deadly weapon enhancement. He further claimed that his counsel was ineffective and his guilty plea invalid.

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>3</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>4</sup>

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.<sup>5</sup> Appellant entered a guilty plea to two charges of attempted murder with the use of a deadly weapon. Appellant admitted to the facts supporting the deadly weapon enhancements. Thus, the district court was permitted to impose the deadly weapon enhancements in the instant case.<sup>6</sup>

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<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>5</sup>See 1995 Nev. Stat., ch. 443, § 3, at 1168-69 (NRS 193.330); NRS 193.165; 1995 Nev. Stat., ch. 443, § 44, at 1181-82 (NRS 200.030).

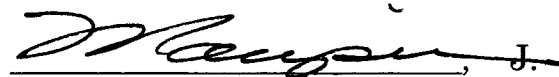
<sup>6</sup>See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis


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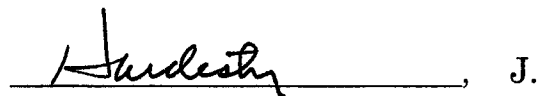
There is no indication that the district court was without jurisdiction to sentence appellant in the instant case. Appellant may not challenge the validity of his guilty plea or whether he received ineffective assistance of counsel in a motion to correct an illegal sentence. Therefore, we affirm the 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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

... continued

of the facts reflected in the jury verdict or admitted by the defendant")  
(emphasis in original).

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</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.

cc: Hon. Michael A. Cherry, District Judge  
Endrel Decode Pope  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk