

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES W. JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45465

**FILED**

SEP 16 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 appellant's motion to correct an illegal sentence and motion for the appointment of counsel. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On March 24, 1987, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on January 20, 1988. Appellant unsuccessfully sought relief from his conviction in two petitions for post-conviction relief and a motion to correct an illegal sentence.<sup>2</sup>

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<sup>1</sup>Jackson v. State, Docket No. 18255 (Order Dismissing Appeal, December 31, 1987).

<sup>2</sup>Jackson v. State, Docket No. 29696 (Order Dismissing Appeal, July 12, 1999); Jackson v. State, Docket No. 21025 (Order Dismissing Appeal, *continued on next page . . .*)

On April 29, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. Appellant also filed a motion for the appointment of counsel. The State opposed the motions. On June 13, 2005, the district court denied appellant's motions. This appeal followed.<sup>3</sup>

In his motion, appellant argued that pursuant to Apprendi v. New Jersey,<sup>4</sup> a jury was required to decide the issue of whether it was just and proper to adjudicate appellant a habitual criminal. Appellant requested resentencing on the primary offense.

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>5</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>6</sup>

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*... continued*

June 29, 1990); Jackson v. State, Docket No. 19291 (Order Dismissing Appeal, December 30, 1988).

<sup>3</sup>To the extent that appellant appealed from the denial of his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying the motion.

<sup>4</sup>530 U.S. 466 (2000).

<sup>5</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>6</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that his sentence was facially illegal or that the district court was without jurisdiction to sentence him in the instant case.<sup>7</sup> As a separate and independent ground to deny relief, appellant's claim for relief is without merit. This court has specifically held that the right to a jury trial does not extend to a habitual criminal proceeding.<sup>8</sup> Rather, the decision of whether to adjudicate a defendant a habitual criminal is left to the discretion of the district court and all that is required is that the district court actually exercise its discretion.<sup>9</sup> In the instant case, the record as a whole reveals that the district court exercised its discretion to adjudicate appellant a habitual criminal. Apprendi expressly excludes the fact of a prior conviction from its holding, and there is nothing in Apprendi suggesting that a jury is required to participate in any facet of the habitual criminal decision.<sup>10</sup>

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<sup>7</sup>See 1985 Nev. Stat., ch. 544, § 1, at 1643-44.

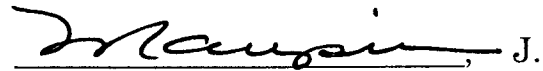
<sup>8</sup>See Howard v. State, 83 Nev. 53, 422 P.2d 548 (1967).

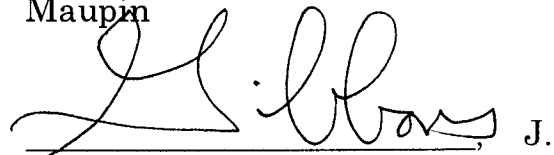
<sup>9</sup>See NRS 207.010; Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000); compare to Walker v. Deeds, 50 F.3d 670 (9th Cir. 1995).

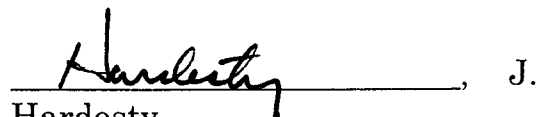
<sup>10</sup>See 530 U.S. at 490. In fact, appellant's apparent argument to the contrary is patently absurd because it would require the jury to make a decision of habitual criminality without actually being presented with the prior convictions. Appellant failed to identify the additional facts that he believed were required to be presented to the jury in order for a just and proper determination. Notably, NRS 207.010 does not specify as a prerequisite any factors in addition to the required number of convictions for habitual criminal adjudication.

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>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>12</sup>

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

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

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

cc: Hon. Joseph T. Bonaventure, District Judge  
James W. Jackson  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>11</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>12</sup>We have received all proper person documents submitted in this matter, and we conclude that the relief requested is not warranted for the reasons set forth above.