

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD GENE HADAWAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45466

FILED

OCT 05 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; Sally L. Loehrer, Judge.

On February 25, 1994, the district court convicted appellant, pursuant to a jury verdict, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief.<sup>2</sup>

On May 4, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 6, 2005, the district court denied appellant's motion. This appeal followed.

---

<sup>1</sup>Hadaway v. State, Docket No. 26060 (Order Dismissing Appeal, November 30, 1995).

<sup>2</sup>Hadaway v. State, Docket No. 37262 (Order of Affirmance, November 28, 2001); Hadaway v. State, Docket No. 29269 (Order Dismissing Appeal, January 30, 1997).

In his motion, appellant contended that application of NRS 193.165, the deadly weapon enhancement, violated double jeopardy and his equal protection and due process rights. Appellant argued that NRS 193.165 does not permit the district court to impose two punishments for a single offense. Appellant relied on this court's holding in Biffath v. Warden<sup>3</sup> and Director v. Biffath.<sup>4</sup>

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>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was without jurisdiction in this matter.<sup>7</sup> Appellant's challenge to NRS 193.165 fell outside the narrow scope of claims permissible in a motion to correct an

---

<sup>3</sup>95 Nev. 260, 593 P.2d 51 (1979) overruled by Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 745 P. 2d 697 (1987).

<sup>4</sup>97 Nev. 18, 621 P.2d 1113 (1981) overruled by Bowen, 103 Nev. 477, 745 P. 2d 697.

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

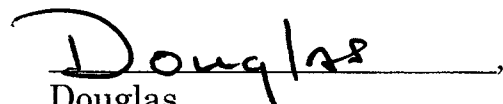
<sup>6</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

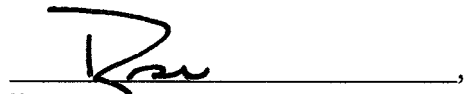
<sup>7</sup>1989 Nev. Stat., ch. 631, § 1, at 1451; NRS 193.165.

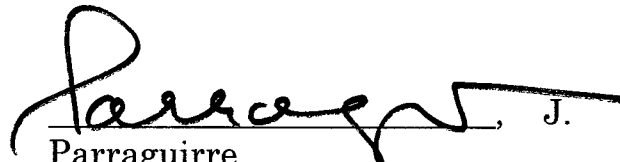
illegal sentence. Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claims lack merit. NRS 193.165 specifically authorizes the district courts to impose an equal and consecutive term for the use of a deadly weapon. Further, it is well settled that NRS 193.165 does not violate the Double Jeopardy Clause.<sup>8</sup> Appellant further failed to provide any specific arguments as to how NRS 193.165 violated his due process or equal protection rights apart from his arguments relating to double jeopardy. Therefore, we affirm the order of the district court denying appellant's motion.

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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Rose

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

---

<sup>8</sup>Bowen, 103 Nev. at 479, 745 P. 2d at 698 (citing Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975)).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Sally L. Loehrer, District Judge  
Donald Gene Hadaway  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk