

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 45498

FILED

OCT 05 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Edwards*
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; Nancy M. Saitta, Judge.

On August 16, 2001, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of thirty-five to ninety months for the robbery, with an equal and consecutive term of thirty-five to ninety months for the deadly weapon enhancement in the Nevada State Prison. No direct appeal was taken.

On May 9, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 1, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence pursuant to NRS 193.165 violated the double jeopardy clause.

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


¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

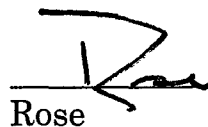
'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"²

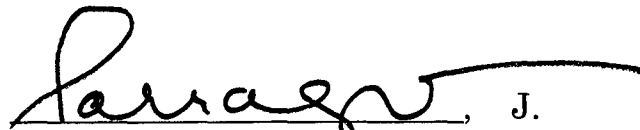
Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal,³ and there is no indication the district court was without jurisdiction. This court has held that the imposition of an enhancement pursuant to NRS 193.165 does not violate the double jeopardy clause.⁴

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.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

³NRS 200.380 (providing for a term of two to fifteen years); NRS 193.165 (providing for an equal and consecutive term).

⁴Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Nancy M. Saitta, District Judge
Eddy Rodriguez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk