

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45503

FILED

JAN 24 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rivard*
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; Joseph T. Bonaventure, Judge.

On May 4, 1990, the district court convicted appellant, pursuant to a jury verdict, of murder with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison, without the possibility of parole, for the murder with the use of a deadly weapon, to run concurrently with two consecutive terms of twenty years for the attempted murder with the use of a deadly weapon. This court dismissed appellant's direct appeal.¹ The remittitur issued on October 22, 1991.

¹Harris v. State, Docket No. 21386 (Order Dismissing Appeal, September 30, 1991).

On May 18, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. On June 11, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended his sentence pursuant to NRS 193.165 violated the double jeopardy clause and that the deadly weapon enhancement was improper because an ice-pick was not a deadly weapon pursuant to Zgombic v. State.²

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's challenges fall outside the narrow scope of a motion to correct an illegal sentence.

²106 Nev. 571, 798 P.2d 548 (1990).

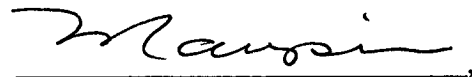
³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

Appellant's sentences were facially legal,⁵ and there is no indication that the district court was without jurisdiction in this matter. Because the jury found that appellant had used a deadly weapon in the commission of the crimes, the district court could impose the deadly weapon enhancements in the instant case and a jury's finding may not be challenged in a motion to correct an illegal sentence.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁵1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030); 1981 Nev. Stat., ch. 64, § 1, at 158 (NRS 193.330); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Mitchell Harris
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk