IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN M. LUNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45591

FILED

DEC 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

On October 26, 1993, the district court convicted appellant, pursuant to an Alford[1] plea, of first degree murder and burglary with the use of a deadly weapon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole and two consecutive ten year terms. Appellant did not file a direct appeal.

On October 13, 1994, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On January 26, 1995, the district court denied appellant's petition. This court dismissed appellant's appeal.[2]

On April 4, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On May 5, 2005, the district court orally granted appellant's

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

[2]Luna v. State, Docket No. 27376 (Order Dismissing Appeal, May 10, 1999).

motion. Before an order was entered, however, the State filed a motion for reconsideration of the oral order. On August 3, 2005, the district court granted the State's motion and denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence for burglary with the use of a deadly weapon was illegal.[3] Appellant argued that the legislature's enactment of NRS 205.060(4), which codified the crime of burglary while in possession of a deadly weapon or firearm, subsumed the crime of burglary with use of a deadly weapon. Accordingly, appellant argued he should have been sentenced to a single two to fifteen year term pursuant to NRS 205.060(4), not the consecutive ten year terms he received pursuant to the burglary and deadly weapon enhancement statutes, NRS 205.060 and NRS 193.165, respectively.

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.[4] "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

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[3]To the extent appellant raised other claims, including that he received ineffective assistance of counsel, they fell outside the narrow scope of issues permissible in a motion to correct illegal sentence, and we therefore decline to reach them. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

[4]Id.

challenge alleged errors in proceedings that occur prior to the imposition of sentence."'[5]

Appellant's claim fell outside the scope of a motion to correct an illegal sentence. Appellant's sentence was facially legal,[6] and there is no indication the district court was without jurisdiction in this matter.

Moreover, as a separate and independent ground to deny relief, we conclude appellant's claim lacks merit. NRS 205.060(4) relates to a person who has or gains possession of a deadly weapon during the commission of a burglary. NRS 193.165 relates to a person who uses a deadly weapon in the commission of a crime, including burglary. The conduct addressed by the two statutes is distinct.[7] Appellant pleaded guilty to burglary with the use of a deadly weapon. The amended information charged appellant with "BURGLARY WITH USE OF A DEADLY WEAPON (Felony – NRS 205.060, 193.165)." Appellant signed a guilty plea memorandum that indicated he was pleading guilty to burglary with the use of a deadly weapon and that the sentence for that charge would be two consecutive terms of ten years. During the district court's plea canvass of appellant, appellant stated he understood he was pleading guilty to burglary with use of a deadly weapon and that the penalty for that charge would be two consecutive terms of ten years. The

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

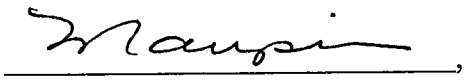
[6]NRS 205.060, NRS 193.165.

[7]We note that because appellant entered an Alford plea, the State at entry of the plea offered to call at trial a witness who would testify he saw appellant fire a weapon "to gain entry" to the room where the murder took place.

plea agreement was translated into appellant's native language of Spanish, appellant signed the Spanish version, and a Spanish translator was used during the plea entry and sentencing.

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[9]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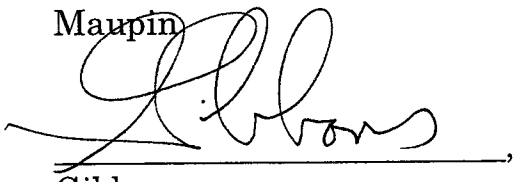
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Gibbons


, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Juan M. Luna
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[8]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[9]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.