

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45632

FILED

OCT 21 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; Joseph T. Bonaventure, Judge.

On February 21, 1989, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, one count of robbery with the use of a deadly weapon and three counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive terms of life in the Nevada State Prison with the possibility of parole and fixed terms totaling forty years.¹ This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on October 3, 1990.

On June 16, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Appellant also entered a guilty plea in the instant case to two counts of robbery and the district court sentenced appellant to serve two concurrent terms of ten years each.

²Collins v. State, Docket No. 19960 (Order Dismissing Appeal, September 14, 1990).

motion. On June 21, 2005, and on July 12, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because the facts relating to the deadly weapon enhancements were not in the indictment nor proven to the jury beyond a reasonable doubt. Appellant further claimed that any additional facts considered by the district court in sentencing appellant should have been presented to the jury.³ Appellant relied upon Apprendi v. New Jersey⁴ and its progeny.

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.⁵ "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to

³Appellant claimed that the following additional facts were considered by the district court in sentencing appellant: (1) statement in the presentence investigation report that appellant had a reputation for being uncooperative until he was brought before the parole board; (2) appellant had a previous conviction for rape and robbery in 1977; (3) appellant exhibited no change in his behavior patterns and had a deep-seated hate and need to exercise power over women; (4) appellant raped six or seven women in a 1977 case; (5) as soon as he was released on parole, appellant victimized more women; (6) appellant victimized a whole area of town; and (7) the prosecutor's argument that appellant could not live in a civilized society.

⁴530 U.S. 466 (2000).

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

challenge alleged errors in proceedings that occur prior to the imposition of sentence."⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal, and the record does not support an argument that the district court was without jurisdiction in the instant case.⁷ Moreover as a separate and independent ground to deny relief, we conclude that appellant's claims are without merit. The deadly weapon enhancements for the primary offenses of robbery and sexual assault were set forth in the charging information. The jury was presented with the issue of deciding whether a deadly weapon had been used in the commission of the primary offenses, and the jury found appellant had used a deadly weapon in the commission of the primary offenses beyond a reasonable doubt. The additional facts that appellant objected to were not required to be presented to the jury as they were facts considered by the district court in determining the proper sentence within the statutory limits of the primary offenses. Apprendi does not stand for the proposition that all facts considered by the district court in sentencing must be submitted to the jury, but rather, only those

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

⁷See 1983 Nev. Stat., ch. 294, § 1, at 717 (NRS 205.060); 1967 Nev. Stat., ch. 211, § 59, at 470-71 (NRS 200.380); 1977 Nev. Stat., ch. 598, § 3, at 1626-27 (NRS 200.366); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).

facts that increase the sentence beyond the statutory maximum for the offense must be presented to the jury.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰

Douglas, J.
Douglas

Rose, J.
Rose

Parraguirre, J.
Parraguirre

⁸530 U.S. at 490 (holding that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") (Emphasis added.)

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

¹⁰We 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.

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