IN THE SUPREME COURT OF THE STATE OF NEVADA

ARRMELLOW LYNCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45654

FILED

OCT 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
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; Valorie Vega, Judge.

On April 10, 2002, the district court convicted appellant, pursuant to a guilty plea, of robbery, victim sixty-five years of age or older. The district court sentenced appellant to serve a term of sixty-two to one hundred fifty-six months in the Nevada State Prison, with an equal and consecutive term for the victim enhancement. Appellant did not file a direct appeal.

On July 1, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 15, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court lacked jurisdiction to enhance his sentence because there was no finding by a jury regarding the victim enhancement. Appellant maintained that he entered a guilty plea only to the primary offense, robbery, and that he did not waive his right to a jury trial on the issue of the victim enhancement. Appellant also argued that the sentence enhancement violated the Double Jeopardy Clause. Appellant further claimed that his guilty plea was not knowingly and voluntarily entered.

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 '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 the motion. Appellant's sentence was facially

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

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

legal.[3] Appellant entered a guilty plea to robbery, victim sixty-five years of age or older. By pleading guilty, appellant waived his right to have a jury determine whether the facts supported the sentence enhancement.[4] Thus, the district court was permitted to impose the victim enhancement in the instant case.[5] There is no indication that the district court was without jurisdiction to sentence appellant in the instant case. Further, the victim enhancement constitutes an additional penalty for the primary offense rather than a separate offense. Therefore NRS 193.167 does not violate the Double Jeopardy Clause.[6] Finally, appellant may not challenge

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[3]See NRS 200.380; 1999 Nev. Stat., ch. 18, § 1, at 42-43.

[4]See McCarthy v. United States, 394 U.S. 459, 466 (1969) (stating that a defendant who enters a guilty plea "simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to a trial by jury, and his right to confront his accusers") (citation omitted).

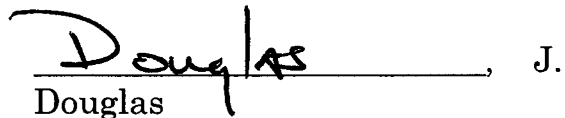
[5]See Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

[6]Cf. Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987).

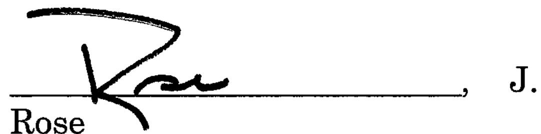
the validity of his guilty plea in a motion to correct an illegal sentence. Accordingly, we affirm the order of the district court.

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.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]



_____________________, J.
Douglas



_____________________, J.
Rose

_____________________, J.
Parraguirre

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

[8]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.

cc: Hon. Valorie Vega, District Judge
Arrmellow Lynch
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk