IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH REYNOLDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45714

FILED

DEC 0 6 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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 28, 1988, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of fifteen years in the Nevada State Prison.

On June 6, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a response. On August 9, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court unconstitutionally enhanced his sentence because there was no finding by a jury that he used a deadly weapon. Appellant claimed that he was unaware that his guilty plea included the deadly weapon enhancement. He further argued that the district court should have conducted a competency hearing.

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 claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal.[3] There is no indication that the district court was without jurisdiction to impose a sentence upon appellant. Moreover, as a separate and independent ground to deny relief, appellant's claims lacked merit. Appellant acknowledged below that he admitted and entered a guilty plea to the charged offense. Appellant was charged by information with eight counts of robbery with the use of a deadly weapon. Appellant admitted to the use of a deadly weapon during the robberies, and the district court was permitted to impose the deadly weapon enhancements.[4] Appellant may

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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)).

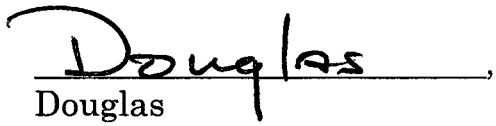
[3]See 1967 Nev. Stat., ch. 211, § 59, 470-71 (NRS 200.380); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).

[4]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). Appellant's reliance upon Stroup v. State, 110 Nev. 525, 874 P.2d 769 (1994) is misplaced. Stroup does not require the jury to make such a finding when the defendant has entered a guilty plea to both the primary offense and the enhancement. Id. at 527-28, 874 P.2d at 770-71.

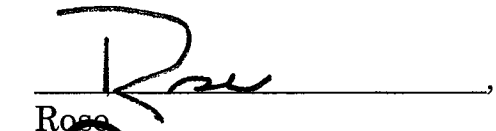
not challenge the validity of his guilty plea in a motion to correct an illegal sentence. Appellant failed to demonstrate any competency hearing was required in the instant case.[5] Therefore, we affirm the order of the district court.

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.[6] Accordingly, we

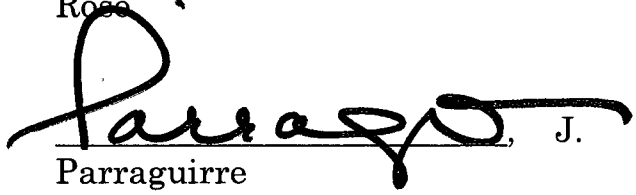
ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas



_____, J.
Rose



_____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Kenneth Reynolds
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[5]See NRS 178.400; NRS 178.405; NRS 178.415.

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