

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 45720

**FILED**

NOV 16 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 appellant's motion to correct an illegal sentence. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On May 25, 1988, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison. No direct appeal was taken.

On May 31, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. On July 25, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant contended that the district court enhanced his sentence based on factors that were not submitted to a jury.<sup>1</sup> Specifically, appellant argued that the district court enhanced his sentence beyond the fifteen year maximum for robbery by sentencing him for the deadly weapon enhancement<sup>2</sup> without a jury finding that he used a

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<sup>1</sup>See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); see also Blakely v. Washington, 542 U.S. 296 (2004).

<sup>2</sup>1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).

deadly weapon during the robbery, and that the district court enhanced his sentence based on unproven facts relating to appellant's criminal background, facts contained in the pre-sentence investigation report, and the opinions and recommendations of the parole and probation department investigator.

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.<sup>3</sup> "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.'"<sup>4</sup>

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 scope of claims permissible in a motion to correct an illegal sentence.<sup>5</sup> Appellant's sentence was facially legal,<sup>6</sup> and there is no indication the district court was without jurisdiction in this matter. Nothing in Apprendi or its progeny requires that facts that do not increase

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

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

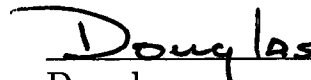
<sup>5</sup>To the extent appellant raised claims other than those relating to the court's jurisdiction to pronounce sentence or the sentence's relation to the statutory maximum, they are outside the limited scope of a motion to correct an illegal sentence and we therefore decline to address them.

<sup>6</sup>See 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165); 1967 Nev. Stat., ch. 211, § 59, at 470 (NRS 200.380).

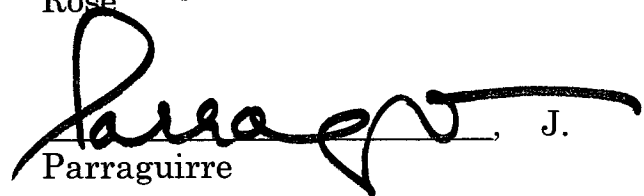
the sentence beyond the statutory maximum must be presented to a jury. Therefore, we affirm the order of the district court. Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant admitted to committing robbery with the use of a deadly weapon in the written plea agreement and in the plea canvass. By admitting to the elements of the charge and pleading guilty, appellant waived his right to have a jury determine those facts. Appellant stated in the plea canvass that he understood he was waiving his right to a jury trial. The district court was thus permitted to apply the deadly weapon enhancement in the instant case.<sup>7</sup>

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>7</sup>See Blakely, 542 U.S. 296.

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John P. Davis, District Judge  
Kenneth Reynolds  
Attorney General George Chanos/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk