

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO COCA A/K/A ANTHONY
ALVARES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45797

FILED

NOV 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rivard*
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. Eighth Judicial District Court, Clark County; David Wall, Judge.

On December 8, 2003, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court also adjudicated appellant a habitual criminal pursuant to NRS 207.010(1)(b). The district court sentenced appellant to serve a term of 120 to 300 months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 16, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On July 18, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court relied on facts other than appellant's prior convictions to enhance his sentence beyond the statutory maximum for burglary without submitting those facts to a jury, in violation of Apprendi v. New Jersey.¹

¹530 U.S. 466 (2000).

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.² "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.'"³

Based on our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of issues permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal,⁴ and there is no indication the district court was without jurisdiction to pronounce sentence in the instant case. As a separate and independent ground to deny relief, appellant's claim was without merit. Appellant failed to demonstrate the district court relied on facts other than appellant's prior convictions in adjudicating appellant a habitual criminal. Appellant admitted to having at least three prior felony convictions. As long as the prior convictions are proved or are admitted by the defendant, as they were in this case, the district court may properly adjudicate appellant a habitual criminal. Further, this court has specifically held that the right to a jury trial does not extend to a habitual criminal

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


³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁴NRS 205.060; NRS 207.010.

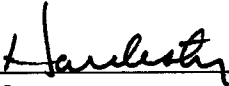
proceeding.⁵ Rather, the decision of whether to adjudicate a defendant a habitual criminal is left to the discretion of the district court and all that is required is that district court actually exercise its discretion.⁶ In the instant case, the record as a whole reveals that the district court exercised its discretion to adjudicate appellant a habitual criminal.

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.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. David Wall, District Judge
Antonio Coca aka Anthony Alvares
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Howard v. State, 83 Nev. 53, 422 P.2d 548 (1967).

⁶See NRS 207.010; Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000); compare Walker v. Deeds, 50 F.3d 670 (9th Cir. 1995).

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