

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD ARTHUR WINFREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45882

FILED

DEC 06 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
J. Richards
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; Donald M. Mosley, Judge.

On December 20, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit murder, two counts of first degree murder with the use of a deadly weapon, and one count of possession of a stolen vehicle. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of life with the possibility of parole for one murder count, two consecutive terms of life without the possibility of parole for the second murder count, and a total of sixteen years for the remaining counts. This court affirmed appellant's judgment of conviction on appeal.¹ The remittitur issued on May 28, 1998.

On April 29, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Greene v. State, 113 Nev. 157, 931 P.2d 54 (1997) (consolidated appeal with co-defendant Travers Greene).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 24, 1999, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On January 19, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 13, 2005, the district court dismissed appellant's petition. This court affirmed the order of the district court on appeal.³

On July 26, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 16, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant contended that application of NRS 193.165, the deadly weapon enhancement, violated double jeopardy and his equal protection and due process rights. Appellant argued that NRS 193.165 does not permit the district court to impose two punishments for a

²Winfrey v. State, Docket No. 34799 (Order of Affirmance, December 12, 2001).

³Winfrey v. State, Docket No. 45193 (Order of Affirmance, July 22, 2005).

single offense. Appellant relied on this court's holding in Biffath v. Warden⁴ and Director v. Biffath.⁵

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.⁶ "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.'"⁷

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal, and there is no indication that the district court was without jurisdiction in this matter.⁸ Appellant's challenge to NRS 193.165 fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claims lack merit. NRS 193.165

⁴95 Nev. 260, 593 P.2d 51 (1979) overruled by Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 745 P. 2d 697 (1987).

⁵97 Nev. 18, 621 P.2d 1113 (1981) overruled by Bowen, 103 Nev. 477, 745 P. 2d 697.

⁶Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

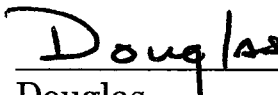
⁷Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

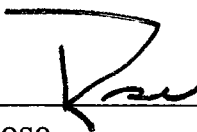
⁸See 1983 Nev. Stat., ch. 525, § 1, at 1494 (NRS 199.480); 1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030); 1991 Nev. Stat., ch. 403, § 6, at 1059 (NRS 193.165); 1979 Nev. Stat., ch. 655, § 84, at 1445 (NRS 205.273).

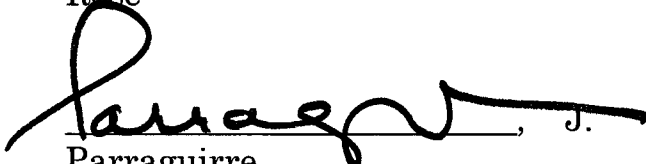
specifically authorizes the district courts to impose an equal and consecutive term for the use of a deadly weapon. Further, it is well settled that NRS 193.165 does not violate the Double Jeopardy Clause.⁹ Appellant failed to provide any specific arguments as to how NRS 193.165 violated his due process or equal protection rights apart from his arguments relating to double jeopardy. Therefore, we affirm the order of the district court denying appellant's motion.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

⁹Bowen, 103 Nev. at 479, 745 P. 2d at 698 (citing Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975)).

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Leonard Arthur Winfrey
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk