IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY L. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46387

FILED

MAY 25 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from the district court's denial of a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On October 23, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count each of invasion of the home, burglary, conspiracy to commit robbery, robbery, trafficking in a controlled substance, and living from the earnings of a prostitute. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010.[1] The district court sentenced appellant to serve two concurrent life sentences in the Nevada State Prison with the possibility of parole after ten years have been served, two concurrent life sentences without the possibility of parole, and two consecutive life sentences with the possibility of parole after ten years have been served. This court affirmed appellant's judgment of conviction on appeal.[2]

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[1]On March 14, 2003, the district court amended the judgment of conviction to include language of its prior adjudication of appellant as a habitual criminal.

[2]Harris v. State, Docket No. 40344 (Order of Affirmance, May 5, 2004).

On May 10, 2005, appellant filed a proper person motion to vacate an illegal sentence in the district court. On June 29, 2005, the district court denied appellant's motion. Appellant did not appeal the denial of this motion.

On October 14, 2005, appellant filed a motion to correct an illegal sentence in the district court. On December 7, 2005, the district court denied the 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 was a habitual criminal. Appellant relied upon Apprendi v. New Jersey[3] and its progeny. Additionally, appellant contended that the district court improperly relied on unverified information in finding appellant a habitual criminal, the district court based its sentencing decision partially on prior felony convictions that were non-violent, and his trial and appellate counsel were ineffective.

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.[4] "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.'"[5]

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[3]530 U.S. 466 (2000).

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

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

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 very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal.[6] There is no indication that the district court was without jurisdiction to impose a sentence upon appellant.

Moreover, as a separate and independent reason to deny relief, appellant's claims lacked merit. Apprendi specifically excludes from its holding a sentencing enhancement involving an increased penalty based upon the fact of a prior conviction.[7] NRS 207.016(2) provides that prior convictions included in a notice of habitual criminality may not be alluded to at the trial for the primary offenses nor read to the jury trying the primary offenses. The district court was presented with certified copies of the prior convictions. Further, the habitual criminal statute "makes no special allowance for non-violent crimes."[8] The district court heard arguments regarding both aggravating and mitigating circumstances and exercised its discretion in adjudicating appellant as a habitual criminal.[9]

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[6]See NRS 205.067; 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060); NRS 199.480; NRS 200.380; NRS 453.3385; NRS 201.320; and NRS 207.010 (providing that a person convicted in this State of any felony, who has previously been three times convicted, may be adjudicated a habitual criminal and sentenced to 1) life without the possibility of parole; 2) life with eligibility of parole beginning when 10 years have been served; or 3) for a definite term of 25 years with eligibility of parole beginning when 10 years have been served).

[7]Apprendi, 530 U.S. at 490.

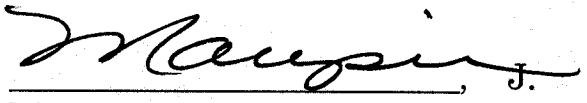
[8]Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

[9]See Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

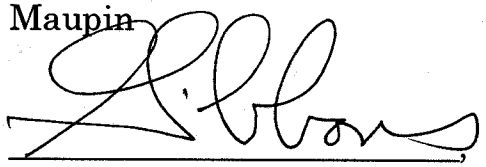
To the extent that appellant argued he received ineffective assistance of counsel, these claims are improperly raised in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



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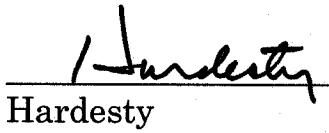

_____, J.
Hardesty

cc: Hon. Valorie Vega, District Judge
Gregory L. Harris
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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