

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE CLIFTON CARTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46409

**FILED**

APR 11 2006

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 a motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On March 4, 1998, the district court convicted appellant, pursuant to a jury verdict, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on October 6, 1998. Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus.<sup>2</sup>

On January 20, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. The district court appointed counsel to assist appellant, and

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<sup>1</sup>Carter v. State, Docket No. 32028 (Order Dismissing Appeal, September 14, 1998).

<sup>2</sup>Carter v. State, Docket No. 36919 (Order of Affirmance, November 5, 2001).

counsel filed a notice that the proper person motion was not going to be supplemented. On February 7, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was unconstitutionally enhanced as no finding was made by the jury that he had used a deadly weapon in the commission of a crime. Appellant relied upon Apprendi v. New Jersey<sup>3</sup> and its progeny.

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>4</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>5</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in the instant case.<sup>6</sup> Moreover, as a separate and independent

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<sup>3</sup>530 U.S. 466 (2000).

<sup>4</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

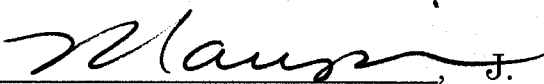
<sup>5</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>6</sup>See 1995 Nev. Stat., ch. 443, § 44, at 1181-82 (NRS 200.030); NRS 193.165.

ground to deny relief, we conclude that appellant's claim is without merit. NRS 193.165, the deadly weapon enhancement, was set forth in the charging document. The jury was instructed and presented with the issue of deciding whether a deadly weapon had been used in the commission of the primary offense, and the jury found appellant had used a deadly weapon in the commission of the primary offense of second degree murder beyond a reasonable doubt.

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>7</sup> Accordingly, we

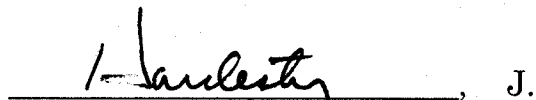
ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Connie J. Steinheimer, District Judge  
Willie Clifton Carter  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk