IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY JOE ORMOND A/K/A TERRY JOE ORMAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46548

FILED

MAY 25 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

On February 11, 2003, the district court convicted appellant, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. Appellant did not file a direct appeal.

On November 22, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 15, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his sentence was illegal because he did not admit the facts supporting the deadly weapon

06-11079

enhancement and there was no finding by a jury regarding the deadly weapon enhancement. Appellant also argued that the sentence enhancement violated the Double Jeopardy Clause by punishing him twice for the same crime.

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.[1] "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.'"[2]

Our review of the record on appeal reveals that the district court did not err in denying the 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,[3] and the record does not support an argument that the district court was without jurisdiction in the instant case.

---

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

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

[3]See NRS 200.080; NRS 193.165.

Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claims are without merit. Appellant entered a guilty plea to voluntary manslaughter with the use of a deadly weapon and admitted cutting the victim's throat and killing her. By pleading guilty, appellant waived his right to have a jury determine whether the facts supported the sentence enhancement.[4] Thus, the district court was permitted to impose the deadly weapon enhancement in the instant case.[5] Further, the deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense and imposition of the enhancement does not violate the Double Jeopardy Clause.[6]

---

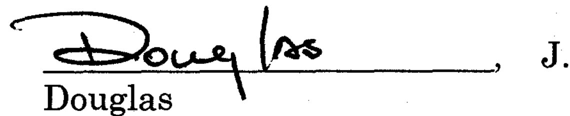
[4]See McCarthy v. United States, 394 U.S. 459, 466 (1969) (stating that a defendant who enters a guilty plea "simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers") (citation omitted).

[5]See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedents make it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original) (citation omitted).

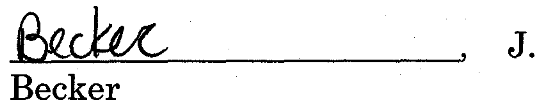
[6]See Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

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

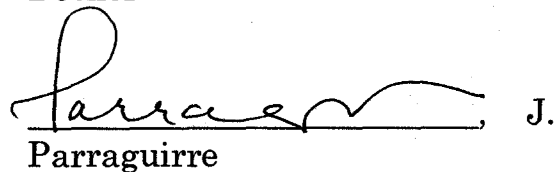
ORDER the judgment of the district court AFFIRMED.[8]



_______________, J.
Douglas



_______________, J.
Becker



_______________, J.
Parraguirre

---

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

[8]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. Donald M. Mosley, District Judge
Terry Joe Ormond
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk