

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47002

FILED

JUL 19 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY 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; Lee A. Gates, Judge.

On January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary (a gross misdemeanor), two counts of burglary (felonies), one count of attempted burglary (felony), and one count of possession of burglary tools (a gross misdemeanor). The district court adjudicated appellant a habitual criminal for the three felony counts and sentenced appellant to serve three consecutive terms of sixty to one hundred and ninety months in the Nevada State Prison and concurrent terms of one year each for the other counts.¹ This court dismissed appellant's appeal from his judgment of conviction.² The remittitur issued on October 17, 2000. Appellant unsuccessfully sought relief in a post-conviction petition for a writ of

¹On July 18, 2001, the district court entered an amended judgment of conviction referencing the habitual criminal statute.

²Beverly v. State, Docket No. 35526 (Order Dismissing Appeal, September 21, 2000).

habeas corpus, a motion to correct an illegal sentence and a motion to modify sentence.³

On February 8, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On March 9, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his habitual criminal adjudication violated Apprendi v. New Jersey⁴ because the issue of whether he should be adjudicated a habitual criminal was not presented to the jury.

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.⁵ "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.'"⁶ A motion to correct an illegal sentence may not be used to correct alleged errors occurring at sentencing.⁷

³Beverly v. State, Docket No. 46547 (Order of Affirmance, March 27, 2006); Beverly v. State, Docket No. 45547 (Order of Affirmance, September 16, 2005); Beverly v. State, Docket No. 38267 (Order of Affirmance, August 21, 2002).

⁴530 U.S. 466 (2000).

⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

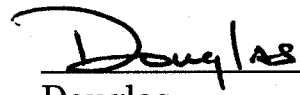
⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

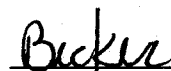
⁷Id.

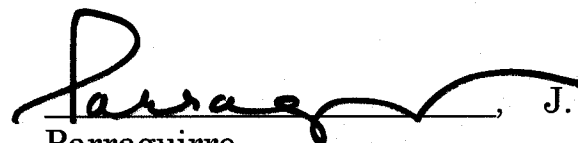
Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.⁸ Further, there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. A claim that the district court allegedly exceeded its authority at sentencing, or violated appellant's due process rights, is not appropriately 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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

⁸See NRS 207.010(1)(a) (setting forth a penalty of not less than five years nor more than twenty years for small habitual criminal treatment).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
Lloyd Steven Beverly
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk