

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DALE DONALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47016

FILED

JUL 05 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Edwards*
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; Donald M. Mosley, Judge.

On August 28, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit murder (Count 2) and two counts of attempted murder with the use of a deadly weapon (Counts 3 and 4). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for Count 2, a term of thirty-six to ninety months; for Count 3, two consecutive terms of forty-eight to one hundred and twenty months; for Count 4, two consecutive terms of forty-eight to one hundred and twenty months. The district court imposed the terms for Counts 3 and 4 to run consecutively to one another. No direct appeal was taken.

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 6, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancements were illegal. Appellant asserted that he only provided the

knife to the co-defendant to use to murder appellant's mother and stepfather. However, he claimed that he was not able to exercise actual or constructive possession over the knife at the time it was used because he was not present during the attack.

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 sentences were facially legal, and there is no indication that the district court was without jurisdiction to impose sentence.³ Appellant entered a guilty plea to two counts of attempted murder with the use of a deadly weapon, and appellant may not challenge the validity of his guilty plea by way of a motion to correct an illegal sentence.


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


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

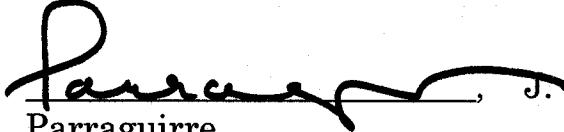
³See NRS 199.480(1)(b) (providing a penalty of not less than two years nor more than ten years for conspiracy to commit murder); NRS 200.030 (establishing that the offense of murder is a category A felony); NRS 193.330(1)(a)(1) (providing a penalty of not less than two years nor more than twenty years for an attempt to commit a category A felony); NRS 193.165 (providing for an equal and consecutive term for use of a deadly weapon).

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

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

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have received all proper person documents submitted, and we conclude no relief is warranted.