IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS JEROME PETTES, AKA, CURTIS EUGENE SHUFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47111

FILED

AUG 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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 September 16, 1986, the district court convicted appellant, pursuant to a bench trial, of one count each of attempted robbery with the use of a deadly weapon and battery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of seven and one-half years in the Nevada State Prison for attempted robbery with the use of a deadly weapon and a consecutive term of ten years for battery. All terms were to run consecutive to the sentence imposed in district court case number C71647. This court dismissed appellant's appeal from his judgment of conviction and sentence.[1] The remittitur issued on October 13, 1987. Appellant unsuccessfully sought post-conviction relief.[2]

[1]Shuford v. State, Docket No. 17709 (Order Dismissing Appeal, September 23, 1987).

[2]Pettes v. State, Docket No. 21024 (Order Dismissing Appeal, June 29, 1990).

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On January 26, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 8, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant alleged that because the information did not contain a charge for battery with the use of a deadly weapon, he did not receive proper notice, and, therefore, his conviction for that charge was improper.

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.[3] "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.'"[4]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal.[5] Further, there is no indication that the district court was without jurisdiction to impose the sentences. Accordingly, we affirm the order of the district court.

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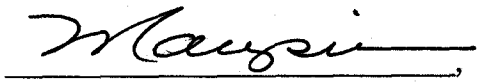
[3]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

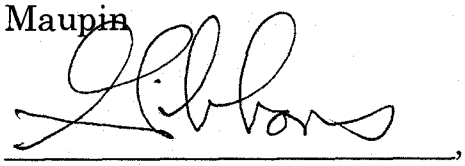
[5]See 1967 Nev. Stat., ch. 211, § 59 at 470-71 (NRS 200.380); 1981 Nev. Stat., ch. 64, § 1 at 158 (NRS 208.070); 1983 Nev. Stat., ch. 277, § 1 at 673-74 (NRS 200.481); 1981 Nev. Stat., ch. 780, § 1 at 2050 (NRS 193.165).

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.[6] Accordingly, we

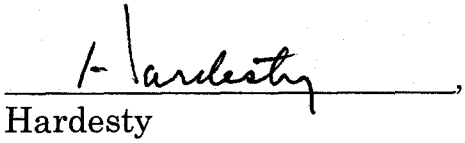
ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

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

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