

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNELL DEWAYNE BELT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47142

FILED

AUG 18 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 appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On July 28, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of larceny from the person. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 11, 2000. Appellant unsuccessfully sought relief in a post-conviction petition for a writ of habeas corpus.²

On March 9, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On March 29, 2006, the district court denied appellant's motion. This appeal followed.

¹Belt v. State, Docket No. 34631 (Order Dismissing Appeal, June 13, 2000).

²Belt v. State, Docket No. 38553 (Order of Affirmance, August 21, 2002).

In his motion, appellant contended that his habitual criminal adjudication violated Apprendi v. New Jersey³ 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.⁴ "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.'"⁵ A motion to correct an illegal sentence may not be used to correct alleged errors occurring at sentencing.⁶

Based on 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.⁷ Further, there is nothing in the record to indicate 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. Accordingly, we affirm the order of the district court.

³530 U.S. 466 (2000).

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

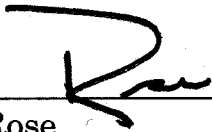
⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁶Id.

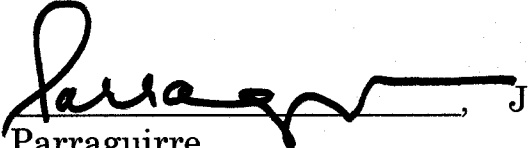
⁷See NRS 205.270; NRS 207.010(1)(a).

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Cornell Dewayne Belt
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).