


IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER GAMBLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47470

FILED

JUL 23 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  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; Joseph T. Bonaventure, Judge.

On May 27, 2005, the district court convicted appellant, pursuant to a jury verdict, of voluntary manslaughter with the use of a deadly weapon, and, pursuant to a guilty plea, of two counts of possession of a firearm by an ex-felon. The district court sentenced appellant to serve a term of four to ten years in the Nevada State Prison for voluntary manslaughter, plus an equal and consecutive term for the deadly weapon enhancement, and two concurrent terms of 16 to 72 months for the possession counts. This court affirmed the judgment of conviction and sentence on appeal.¹ The remittitur issued on April 7, 2006.

¹Gamble v. State, Docket No. 45520 (Order of Affirmance, March 13, 2006).

On April 25, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On August 7, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the imposition of the deadly weapon enhancement was illegal because the jury did not make a specific finding that appellant used a deadly weapon in the commission of the crime. Appellant also claimed that his sentence was illegal because the district court enhanced his minimum term to be served for voluntary manslaughter above that provided by statute.

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.² "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.'"³

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 permitted in a motion to correct an illegal sentence. Appellant's sentence fell within the range provided by statute

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

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

and was facially legal.⁴ Further, appellant failed to demonstrate that the district court was without jurisdiction in this matter. Moreover, as a separate and independent ground to deny relief, appellant's claims lacked merit. Appellant was provided notice that he was charged with the deadly weapon enhancement and the jury was instructed on the use of a deadly weapon. The jury returned a verdict of voluntary manslaughter with the use of a deadly weapon. Therefore, the district court did not err in imposing the deadly weapon enhancement.⁵ Further, NRS 200.080 provided that an individual convicted of voluntary manslaughter shall be sentenced to a minimum term of not less than one year and a maximum term of not more than ten years. Because appellant's sentence for voluntary manslaughter fell within the statutory range and the minimum term did not exceed forty percent of the maximum term imposed,⁶ the district court did not err in imposing a minimum term of four years for the voluntary manslaughter conviction.

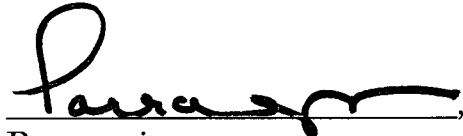
⁴See NRS 193.165; NRS 200.080; NRS 202.360.

⁵See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes 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).

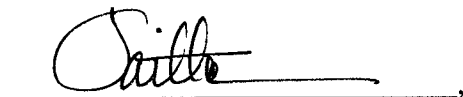
⁶See NRS 193.130(1).

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.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Eighth Judicial District Court Dept. 6, District Judge
Lester Gamble
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

⁸We have reviewed all documents that appellant has included in the notice of appeal 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.