

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH N. WARREN A/K/A JOSEPH
NAPOLEAN WARREN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47669

FILED

DEC 13 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 a motion to correct or vacate an illegal sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On April 3, 1990, the district court convicted appellant, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's judgment of conviction on appeal.¹

On May 19, 2006, appellant filed a proper person motion to correct or vacate an illegal sentence in the district court. The State opposed the motion. On June 20, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegal because the fact of the deadly weapon was not submitted to the jury for a decision.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

¹McCurdy v. State, 107 Nev. 275, 809 P.2d 1265 (1991).

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 a motion to correct an illegal sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was without jurisdiction in this matter.⁴ Moreover, as a separate and independent ground to deny relief, appellant's claim was patently without 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 murder in the first degree with the use of a deadly weapon. Thus, the district court did not err in imposing the deadly weapon enhancement.⁵

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)).

⁴See 1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030); NRS 193.165.

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).

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.⁷

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Joseph N. Warren
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court 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.