

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM J. KINSEY A/K/A WILLIAM
JERMAINE KINSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47683

FILED

NOV 09 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 post-conviction petition for a writ of habeas corpus and motions to correct an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On August 8, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. This court affirmed the judgment of conviction on appeal.¹

On May 4, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed an amendment to the petition on May 16, 2006. On May

¹Kinsey v. State, Docket No. 45897 (Order of Affirmance, March 24, 2006).

16, 2006, and on May 31, 2006, appellant also filed motions to correct an illegal sentence. The State opposed the petition and motions. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing on the petition. On July 5, 2006, the district court denied appellant's petition and motions. This appeal followed.²

Post-Conviction Petition for a Writ of Habeas Corpus

In his petition, appellant contended that his due process rights were violated and he received ineffective assistance of counsel. The only supporting facts alleged were that the district court erroneously set the minimum sentence at four years when the statute provides for a minimum term of one year and that the deadly weapon enhancement was illegal.

We conclude that the district court did not err in denying appellant's petition. Appellant's petition was bereft of factual support.³ To the extent that appellant claimed his counsel was ineffective for failing to challenge the four-year minimum sentence or the deadly weapon enhancement, appellant failed to demonstrate that his trial counsel's

²In his petition, appellant requested that the district court appoint counsel to assist appellant. To the extent that appellant appealed the decision of the district court to deny the appointment of counsel, we conclude that the district court did not abuse its discretion in declining to appoint counsel. See NRS 34.750.

³See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

performance was deficient or that he was prejudiced.⁴ The district court's imposition of a four-year minimum term fell within the parameters set by the legislature.⁵ The district court further did not err in imposing an equal and consecutive term for the use of a deadly weapon because the jury found that appellant had used a deadly weapon in the commission of the primary offense.⁶ Therefore, we affirm the decision of the district court to deny appellant's petition.

Motions to Correct an Illegal Sentence

In his motions, appellant claimed that his sentence was illegal because the minimum sentence should only have been one year. Appellant further challenged the deadly weapon enhancement on the ground that the jury was not instructed that the deadly weapon enhancement would result in an equal and consecutive term and that the jury did not make a finding on the deadly weapon.

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

⁴See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁵See NRS 200.080 (providing that voluntary manslaughter may be punished by a minimum term of not less than one year and a maximum term of not more than ten years).

⁶See NRS 193.165.

the statutory maximum.⁷ "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.'"⁸

Our review of the record on appeal reveals that the district court did not err in denying appellant's motions. Appellant's sentence was facially legal, and there is no indication that the district court was without jurisdiction in the instant case.⁹ Appellant's challenge to the deadly weapon enhancement fell outside the scope of claims permissible in a motion to correct an illegal sentence. Moreover, as a separate and independent ground to deny relief, appellant's challenge to the deadly weapon enhancement lacked merit. The jury was instructed that they must find whether a deadly weapon was used and the definition of a deadly weapon. The jury was further instructed that the State was required to prove every element beyond a reasonable doubt. The jury found that appellant used a deadly weapon during the commission of the primary offense. Therefore, we affirm the decision of the district court to deny the motions.

⁷Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁸Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁹See NRS 200.080; NRS 193.165.

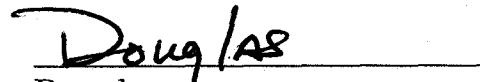
Conclusion

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
William J. Kinsey
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹In light of our disposition, we deny appellant's motion to dismiss this appeal without prejudice.