

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED PITTMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47690

FILED

DEC 05 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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 June 15, 2005, the district court convicted appellant, pursuant to a guilty plea, of attempted battery with the use of a deadly weapon. The district court sentenced appellant to serve a term of one to three years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on October 11, 2005.

On June 6, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 22, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant raised a double jeopardy argument. Specifically, appellant claimed that his conviction for attempted battery

¹Pittman v. State, Docket No. 45436 (Order Dismissing Appeal, September 14, 2005).

with the use of a deadly weapon was duplicative to his misdemeanor conviction for battery constituting domestic violence because the acts supporting each offense occurred during the same altercation. Appellant argued that because the conviction for attempted battery with the use of a deadly weapon was duplicative, the sentence imposed for that conviction was illegal.

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 appellant's motion. The term for appellant's sentence was facially legal.⁴ Further, there is no indication that the district court was without jurisdiction. Finally, appellant's double jeopardy claim fell outside the scope of a motion to correct an illegal sentence because the claim challenges the validity of his conviction. Accordingly, we affirm the order of the district court.

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 2003 Nev. Stat., ch. 23, § 2, at 355-57 (NRS 200.481); NRS 193.330.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We 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.