

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC A. MCJOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47732

FILED

JAN 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Roberts*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On September 8, 2004, the district court convicted appellant, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison. No direct appeal was taken.

On June 13, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On August 30, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court unconstitutionally enhanced his sentence because there was no finding by a jury that he used a deadly weapon. Appellant additionally maintained that his sentence exceeded that set forth in the plea agreement.

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.¹ "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.'"²

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal.³ Appellant entered a guilty plea to the crime of attempted murder with the use of a deadly weapon, and appellant admitted to the facts supporting the deadly weapon enhancement. Thus, the district court was permitted to impose the deadly weapon enhancement.⁴ There is no indication that the district court was without jurisdiction to impose a sentence upon appellant. Appellant may not challenge the validity of his guilty plea in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

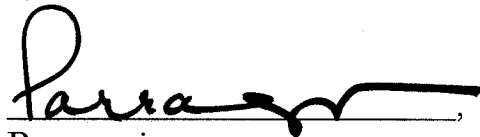
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

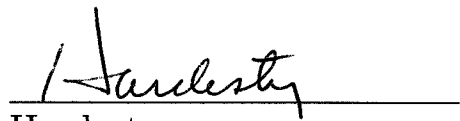
³See NRS 200.030; NRS 193.330; NRS193.130 (providing for a term of imprisonment of one to twenty years for a category B felony, with the minimum term not to exceed 40% of the maximum term); NRS 193.165 (providing for an equal and consecutive penalty for the use of a deadly weapon).

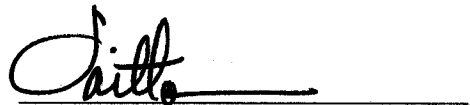
⁴See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Sally L. Loehrer, District Judge
Marc A. McJoy
Attorney General Catherine Cortez Masto/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.