

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY SIREE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47859

FILED

DEC 21 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 an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 17, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of forty-eight to one hundred and twenty months in the Nevada State Prison. No direct appeal was taken.

On July 11, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On August 3, 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 presented to a jury. Further, appellant claimed that the district court violated the plea agreement by imposing minimum terms in excess of two years.

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 appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is no indication that the district court was not a court of competent jurisdiction.³ Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant pleaded guilty to robbery with the use of a deadly weapon, and appellant admitted to the facts supporting the deadly weapon enhancement. Thus, the district court properly imposed the deadly weapon enhancement.⁴ The record does not support appellant's claim that he was promised a minimum term not to exceed two years; rather, appellant was informed that the minimum term

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 200.380(2); NRS 193.165.

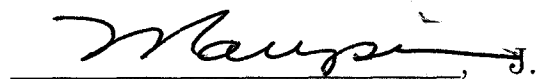
⁴See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

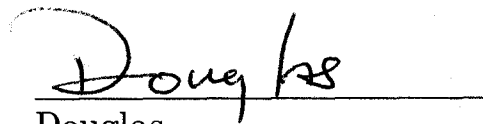
could not be less than two years and that sentencing was within the discretion of the district court. Therefore, we affirm the order of the district court.

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.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Terry Siree Johnson
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).