

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARLANDER GIVENS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48069

FILED

SEP 07 2007

JANETTE M. BOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On June 20, 1989, the district court convicted appellant Arlander Givens, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Givens to serve two consecutive life terms in prison with the possibility of parole. We dismissed Givens's appeal from his judgment of conviction,¹ and remittitur issued on January 9, 1990. He also unsuccessfully sought postconviction relief in the district court. On August 15, 2005, Givens filed a motion to correct an illegal sentence, which the district court denied. This appeal followed.

¹Givens v. State, Docket No. 20154 (Order Dismissing Appeal, December 20, 1989).

Givens argues that the district court erred in denying his motion to correct an illegal sentence because he is actually innocent of the deadly weapon enhancement. Specifically, he contends that the cinder block used in the killing did not constitute a deadly weapon under Zgombic v. State,² which Givens asserts was the relevant law at the time of his direct appeal. We note, however, that Givens's conviction was final several months before we issued our opinion in Zgombic, which we subsequently held had no retroactive application.³ A motion to correct an illegal sentence may only challenge the facial legality of a sentence, *i.e.*, either the district court was without jurisdiction to impose a sentence or the sentence imposed exceeded the statutory maximum.⁴ A motion to correct an illegal sentence presupposes a valid conviction and is not an appropriate vehicle "for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing."⁵

²106 Nev. 571, 798 P.2d 548 (1990), superseded by statute as stated in Steese v. State, 114 Nev. 479, 960 P.2d 321 (1998).

³See Bridgewater v. Warden, 109 Nev. 1159, 1161, 865 P.2d 1166, 1167 (1993).

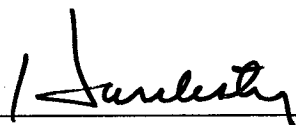
⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

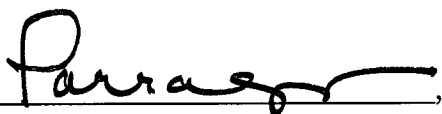
⁵Id.

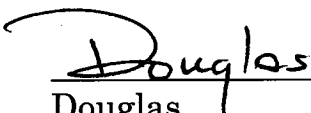
We conclude that the district court did not err in denying Givens's motion, as his sentence was facially legal⁶ and nothing in the record on appeal suggests that the district court was without jurisdiction to impose sentence in this case. Givens's challenge to his judgment of conviction falls outside the permissible scope of a motion to correct an illegal sentence.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁶See NRS 193.165; NRS 200.030.

⁷To the extent Givens argues that appellate counsel was ineffective for failing to challenge the deadly weapon enhancement on direct appeal, this matter is inappropriate for a motion to correct an illegal sentence. See Edwards, 112 Nev. at 708, 918 P.2d at 324.

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk