

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALLACE EVAN SHERFIELD A/K/A
WALLACE E. SHEFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48135

FILED

JUL 05 2007

BY: MANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Jackie Glass, Judge.

On September 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of grand larceny. Pursuant to NRS 207.010(1)(a) the district court sentenced appellant as a habitual criminal to serve a term of 60 to 150 months in the Nevada State Prison. Appellant did not file a direct appeal.

On August 16, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 15, 2006, the district court denied appellant's motion.¹ This appeal followed.

¹Although the district court order was titled "Order Denying Defendant's Motion to Modify Illegal Sentence" and purported to deny a
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In his motion, appellant contended that his habitual criminal adjudication was illegal because the determination of whether it was just and proper to adjudicate appellant a habitual criminal was made by the district court instead of a jury.² Appellant claimed that this determination constituted an impermissible enhancement of his sentence.

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the scope of claims permissible in a motion to correct an illegal

. . . continued

motion to modify an illegal sentence, the record reveals that the order resolved appellant's motion to correct an illegal sentence.

²See Apprendi v. New Jersey, 530 U.S. 466 (2000).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

sentence as it challenged an alleged error at sentencing.⁵ Appellant's sentence was facially legal, and there is no indication that the district court was not a court of competent jurisdiction.⁶ Moreover, as a separate and independent ground to deny relief, we conclude that the claim lacked merit. This court recently clarified that the just and proper determination relates to the discretion to dismiss a count and does not serve to increase the punishment, and thus, the district court could sentence appellant as a habitual criminal without submission of the issue before a jury upon presentation and proof of the requisite number of prior convictions.⁷ The State presented proof of five prior convictions, and thus the requirements of NRS 207.010(1)(a) were satisfied. Therefore, we affirm the order of the district court.

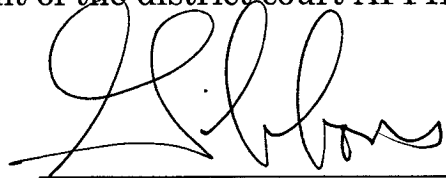
⁵See *id.* (holding that a motion to correct an illegal sentence cannot be used as a "vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing").


⁶See NRS 207.010(1)(a) (setting the requirements for small habitual criminal treatment as proof of at least two prior felony convictions or three prior gross misdemeanor or misdemeanor convictions of which fraud or intent to defraud was an element).

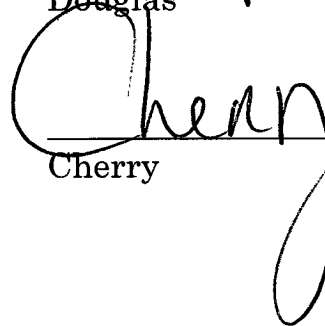
⁷*O'Neill v. State*, 123 Nev. ___, 153 P.3d 38 (2007).

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jackie Glass, District Judge
Wallace Evan Sherfield
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).