

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALDO ALCAZAR WATTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48153

FILED

JUL 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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 May 25, 2005, the district court convicted appellant, pursuant to a guilty plea, of burglary and robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of one to four years in the Nevada State Prison for the burglary, a concurrent term of two to five years for the robbery, plus a consecutive term of two to five years for the deadly weapon enhancement. Appellant did not file a direct appeal.

On August 17, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On September 11, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his sentence was illegal and exceeded the statutory maximum because the deadly weapon

enhancement was not found by a jury and he did not stipulate to facts regarding an enhancement for the use of a deadly weapon.¹ Appellant also claimed that the statute governing the deadly weapon enhancement, NRS 193.165, violates double jeopardy because it constitutes a separate penalty.

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. Appellant's claims fell outside the scope of claims permissible in a motion to correct an illegal

¹See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); see also Blakely v. Washington, 542 U.S. 296 (2004).

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)).

sentence. Appellant's sentence was facially legal,⁴ and there is no indication the district court was without jurisdiction in this matter. Nothing in Apprendi or its progeny requires that facts that do not increase the sentence beyond the statutory maximum must be presented to a jury. Therefore, we affirm the order of the district court. Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant admitted to committing robbery with the use of a deadly weapon. By admitting to the elements of the charge and pleading guilty, appellant waived his right to have a jury determine those facts. Appellant acknowledged in the written plea agreement that he understood he was waiving his right to a jury trial. The district court was thus permitted to apply the deadly weapon enhancement in the instant case.⁵ Additionally, the deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense and imposition of the enhancement does not violate the Double Jeopardy Clause.⁶

⁴See 1991 Nev. Stat., ch. 403, § 6, at 1059 (NRS 193.165); 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060); NRS 200.380.

⁵See Blakely, 542 U.S. 296.

⁶See Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

Maupin, C.J.

Maupin

Gibbons, J.

Gibbons

Douglas, J.

Douglas

cc: Eighth Judicial District Court Dept. 17, District Judge
Ronaldo Alcazar Watters
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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.