

IN THE SUPREME COURT OF THE STATE OF NEVADA


WILLIAM WESTRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48194

FILED

FEB 05 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
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 February 28, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 42 to 180 months in the Nevada State Prison. No direct appeal was taken.

On August 25, 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. This appeal followed.

In his motion, appellant first contended that the deadly weapon enhancement was illegal because he was not informed that the deadly weapon enhancement required consecutive sentences. Appellant claimed that he understood that he would receive only one term. Appellant further claimed that he should have received a jury trial for the

aggravating factors from the presentence investigation report that the district court considered in sentencing him.

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.<sup>1</sup> "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."<sup>2</sup>

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 a motion to correct an illegal sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was without jurisdiction in the instant case.<sup>3</sup> Appellant may not attack the validity of his guilty plea by way of a motion to correct an illegal sentence. Therefore, we affirm the order of the district court denying the motion.

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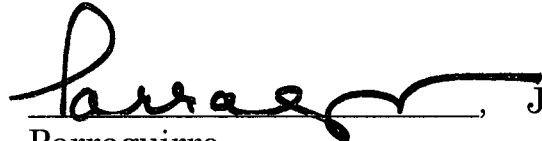
<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

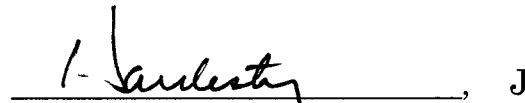
<sup>2</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


<sup>3</sup>See NRS 200.030 (providing that murder is a category A felony); NRS 193.330(1)(a) (providing for a minimum term of not less than 2 years and a maximum term of not more than 20 years for an attempt to commit a category A felony); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

cc: Hon. Sally L. Loehrer, District Judge  
William Westry  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).