

IN THE SUPREME COURT OF THE STATE OF NEVADA


NATHANIEL SIMPSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48223

**FILED**

APR 23 2007

ORDER OF AFFIRMANCE

BY  JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
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; Donald M. Mosley, Judge.

On October 14, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon (count 1), one count of assault with a deadly weapon (count 2), and one count of stop required on signal of a police officer (count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) for count 1, two consecutive terms of twenty-six to one hundred and twenty months; (2) for count 2, a term of twelve to forty-eight months, to be served concurrently with count 1; and (3) for count 3, a term of nineteen to forty-eight months, to be served consecutively to count 2. No direct appeal was taken.

On September 14, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. On December 14, 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

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presented to a jury. Appellant further claimed that the aggravating factors that the district court considered at sentencing must be presented to a jury.

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 narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal, and there is no indication that the district court did not have jurisdiction over this matter.<sup>3</sup> Moreover, as a separate and independent ground to deny relief, appellant's claims lack merit. Appellant pleaded guilty to using a deadly weapon during the commission of the robbery; and thus, the district court was permitted to apply the deadly weapon enhancement in the instant case.<sup>4</sup> Further, appellant was not entitled to a jury determination on

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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)).

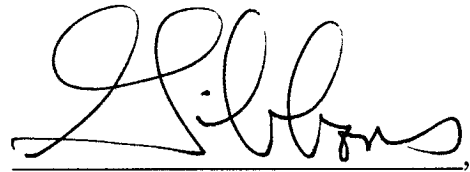
<sup>3</sup>See NRS 200.380(2); NRS 200.471(2)(b); NRS 484.348(3).

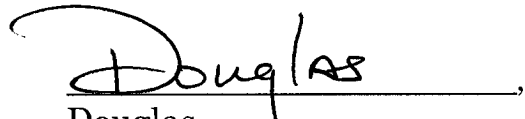
<sup>4</sup>See Blakely v. Washington, 542 U.S. 296 (2004).

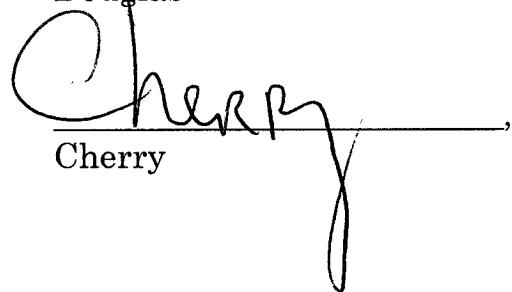
other factors considered by the district court in choosing a sentence within the statutory range as these other factors did not increase the sentence beyond the statutory maximum.<sup>5</sup> Therefore, we affirm the order of the district court.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Donald M. Mosley, District Judge  
Nathaniel Simpson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>5</sup>See Apprendi v. New Jersey, 530 U.S. 466 (2000).

<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).