

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP J. LYONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48269

**FILED**

FEB 07 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruade*  
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; Lee A. Gates, Judge.

On May 2, 1991, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree kidnapping with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole and two consecutive terms of nine years, the latter terms to be served concurrently with the former terms. This court dismissed appellant's direct appeal.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief by way of two post-conviction petitions for writs of habeas corpus.<sup>2</sup>

On September 25, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State

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<sup>1</sup>Lyons v. State, Docket No. 22332 (Order Dismissing Appeal, February 3, 1993).

<sup>2</sup>Lyons v. State, Docket No. 35151 (Order of Affirmance, August 7, 2001); Lyons v. State, Docket No. 26436 (Order Dismissing Appeal, February 10, 1998).

opposed the motion. On October 16, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegal because a deadly weapon was a necessary element of the crimes as charged: first degree kidnapping with the use of a deadly weapon and robbery with the use of deadly weapon. Appellant reasoned that because the State included language relating to the deadly weapon enhancement within the counts of the primary offenses that the deadly weapon became a necessary element of the primary offenses. Appellant further claimed that the jury never found that the deadly weapon was a necessary element of the primary offenses. Appellant also claimed that the judgment of conviction was illegal because it failed to specify his parole eligibility term for kidnapping. Finally, appellant claimed that the judgment of conviction was illegal because the jury hung on the count of sexual assault—the failure causing the prison to label him as a sex offender.

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>3</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>4</sup>

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

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

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 very 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 was not a competent court of jurisdiction.<sup>5</sup> Moreover, as a separate and independent ground to deny relief, appellant's claims lack merit. A deadly weapon is not a necessary element of kidnapping or robbery, and that fact that language relating to the deadly weapon enhancement was included with the primary offense does not alter this analysis.<sup>6</sup> The jury returned a verdict that found appellant had used a deadly weapon, and thus, the district court properly enhanced the sentences pursuant to NRS 193.165.<sup>7</sup> The judgment of conviction was not illegal because it failed to specify the parole eligibility term in the instant case because a specific reference is not necessary to determine parole eligibility, and appellant failed to demonstrate any

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<sup>5</sup>See 1973 Nev. Stat., ch. 798, §6, at 1804-05 (NRS 200.320) (providing for a life term or a definite term of not less than five years with parole eligibility after five years for first degree kidnapping when the kidnapped person suffers no substantial bodily harm by reason of such kidnapping); 1967 Nev. Stat., ch. 211, §59, at 470-71 (NRS 200.380) (providing for a term of not less than one year nor more than fifteen years for robbery); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

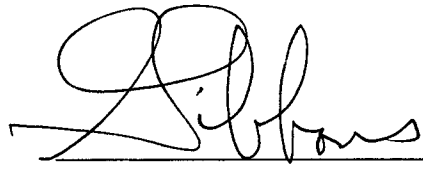
<sup>6</sup>See NRS 200.320; NRS 200.380; NRS 193.165(3).

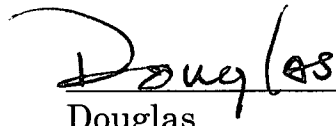
<sup>7</sup>See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is " the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original omitted).

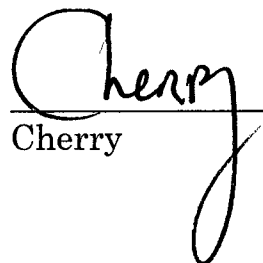
confusion regarding the parole eligibility term.<sup>8</sup> The judgment of conviction did not indicate that appellant was convicted of sexual assault, and appellant failed to demonstrate that any labels placed upon him by the prison arose from the judgment of conviction. Therefore, we affirm the order 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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

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

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

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

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<sup>8</sup>See NRS 176.105(1)(c).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We 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.

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