

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE B. GREENBERG A/K/A JESSE
GREENBERG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48409

FILED

APR 24 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Castillo*
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; Valerie Adair, Judge.

On July 6, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, one count of grand larceny, one count of possession of stolen property and one count of possession of burglary tools. Pursuant to NRS 207.010(1)(b) the district court sentenced appellant as a habitual criminal to serve four concurrent terms of life in the Nevada State Prison with the possibility of parole. The district court further sentenced appellant to time served for possession of burglary tools. This court affirmed the judgment of conviction on appeal.¹

¹Greenberg v. State, Docket No. 45529 (Order of Affirmance, July 6, 2006).

On October 12, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 1, 2006, the district court denied appellant's motion. This appeal followed.

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 increased his sentence beyond the statutory maximum for the primary offenses.

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

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)).

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 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 four prior convictions, and thus the requirements of NRS 207.010(1)(b) 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").

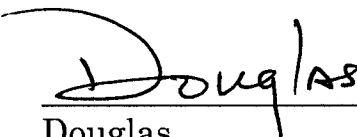
⁶See NRS 207.010(1)(b) (setting the requirements for large habitual criminal treatment as proof of at least three prior felony convictions).

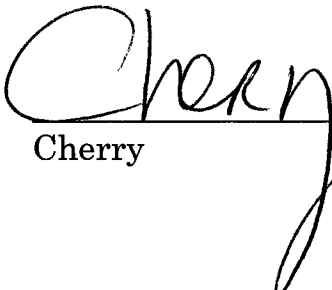
⁷*O'Neill v. State*, 123 Nev. ___, ___ P.3d ___ (Adv. Op. No. 2, March 8, 2007).

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.⁹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

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

⁹We 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. Valerie Adair, District Judge
Jesse B. Greenberg
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk