

IN THE SUPREME COURT OF THE STATE OF NEVADA

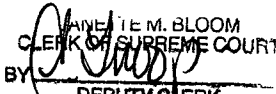
TARZ DEMONE MITCHELL A/K/A
TARZ D. MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48447

FILED

MAY 11 2007

ORDER OF AFFIRMANCE

DAVE L. M. BLOOM
CLERK OF SUPREME COURT
BY 
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; Joseph T. Bonaventure, Judge.

On November 18, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary while in possession of a firearm, five counts of first degree kidnapping with the use of a deadly weapon, one count of conspiracy to commit robbery, three counts of robbery with the use of a deadly weapon, and one count of resisting a public officer. The district court sentenced appellant to serve terms totaling fourteen to sixty years in the Nevada State Prison. This court affirmed the judgment of conviction on appeal.¹ Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

¹Mitchell v. State, Docket No. 35204 (Order of Affirmance, February 12, 2002).

²Mitchell v. State, Docket No. 41460 (Order of Affirmance, July 1, 2004).

On October 23, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 17, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancements were illegal. Appellant claimed that because the State charged the deadly weapon enhancements within the same counts of the primary offenses that the deadly weapon became a necessary element of the primary offenses, and thus, his sentences should not have been enhanced.³ Appellant appeared to also argue that the issue of the deadly weapon enhancements was not presented to the 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.⁴ "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.'"⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell

³See NRS 193.165(3) (providing that the deadly weapon enhancement does not apply where the use of the deadly weapon is a necessary element of the crime).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal, and appellant did not demonstrate that the district court was without jurisdiction in the instant case.⁶ Moreover, as a separate and independent ground to deny relief, appellant's claims lacked merit. A deadly weapon is not a necessary element of the offenses of kidnapping or robbery, and the fact that language relating to the deadly weapon enhancements was included with the primary offenses does not alter this analysis.⁷ The jury was instructed regarding the deadly weapon enhancements and returned verdicts that found appellant had used a deadly weapon in the commission of the offenses, and thus, the district court properly enhanced the sentences pursuant to NRS 193.165.⁸ Therefore, we affirm the order of the district court.

⁶See 1995 Nev. Stat., ch. 443, § 124, at 1215 (providing for a penalty of not less than two years and not more than fifteen years for burglary while in possession of a firearm); NRS 200.320(2)(b) (providing for a definite term of fifteen years with parole eligibility to begin after service of a minimum of five years for the crime of first degree kidnapping); NRS 200.380(2) (providing for a penalty of not less than two years and not more than fifteen years for robbery); NRS 199.480(1)(a) (providing for a penalty of not less than one year and not more than six years for conspiracy to commit robbery); NRS 199.280(1) (setting forth a Category D felony when a dangerous weapon is used during the course of resisting a public officer); NRS 193.130 (providing for a penalty of not less than one year and not more than four years for a Category D felony); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon).

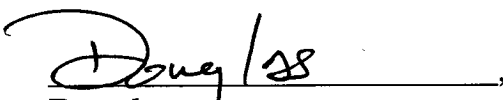
⁷See NRS 200.310; NRS 200.380; NRS 193.165(3).

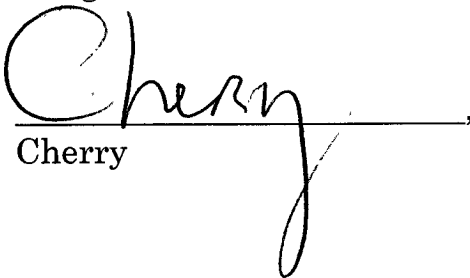
⁸See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis
continued on next page . . .

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Eighth Judicial District Court Dept. 6, District Judge
Tarz Demone Mitchell
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

... continued

of the facts reflected in the jury verdict or admitted by the defendant")
(emphasis in original omitted).

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