


IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48462

**FILED**

MAY 14 2007

JUSTICE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

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 January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary (a gross misdemeanor), two counts of burglary (felonies), one count of attempted burglary (felony), and one count of possession of burglary tools (a gross misdemeanor). The district court sentenced appellant as a habitual criminal for the three felony counts and sentenced appellant to serve three consecutive terms of 60 to 190 months in the Nevada State Prison and concurrent terms of one year each for the other counts.<sup>1</sup> This

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<sup>1</sup>On July 18, 2001, the district court entered an amended judgment of conviction referencing the habitual criminal statute.

court dismissed appellant's appeal from his judgment of conviction.<sup>2</sup> The remittitur issued on October 17, 2000. Appellant unsuccessfully sought relief in a post-conviction petition for a writ of habeas corpus, several motions to correct an illegal sentence, and a motion to modify sentence.<sup>3</sup>

On October 16, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 16, 2006, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his sentence as a habitual criminal violated Apprendi v. New Jersey<sup>4</sup> and Kaua v. Franks<sup>5</sup> because the issue of whether he should be sentenced as a habitual criminal was not presented to the jury and required judicial fact-finding beyond the existence of prior felony convictions.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

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<sup>2</sup>Beverly, Jr. v. State, Docket No. 35526 (Order Dismissing Appeal, September 21, 2000).

<sup>3</sup>Beverly v. State, Docket No. 47002 (Order of Affirmance, July 19, 2006); Beverly v. State, Docket No. 46547 (Order of Affirmance, March 27, 2006); Beverly v. State, Docket No. 45547 (Order of Affirmance, September 16, 2005); Beverly v. State, Docket No. 38267 (Order of Affirmance, August 21, 2002).

<sup>4</sup>530 U.S. 466 (2000).

<sup>5</sup>436 F.3d 1057 (9th Cir. 2006).

jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.<sup>6</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>7</sup> A motion to correct an illegal sentence may not be used to correct alleged errors occurring at sentencing.<sup>8</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.<sup>9</sup> Further, there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. A claim that the district court allegedly exceeded its authority at sentencing, or violated appellant's due process rights, is not appropriately raised in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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<sup>6</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

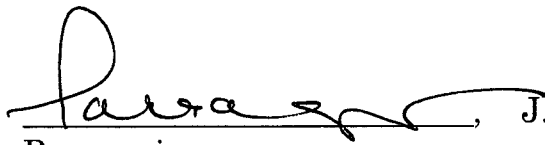
<sup>7</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>8</sup>Id.

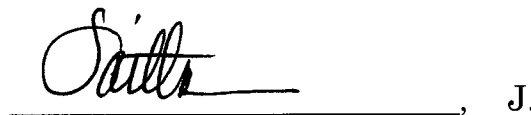
<sup>9</sup>See NRS 207.010(1)(a) (setting forth a penalty of not less than five years nor more than twenty years for small habitual criminal treatment).

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

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

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>11</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.