

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS RAUL LABORI A/K/A LUIS R.
LABORI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48587

FILED

MAY 22 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct or modify a sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 30, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree kidnapping with the use of a deadly weapon, two counts of sexual assault with the use of a deadly weapon and one count of possession of a controlled substance. The district court sentenced appellant to serve a total of two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction on appeal.¹

Petitioner unsuccessfully sought post-conviction relief by way of post-conviction petitions for writs of habeas corpus.² Petitioner further

¹Labori v. State, Docket No. 29551 (Order of Affirmance, October 5, 2000).

²Labori v. State, Docket No. 42591 (Order of Affirmance, August 23, 2004); Labori v. State, Docket No. 39279 (Order of Affirmance, December 16, 2002).

pursued a motion to correct an illegal sentence challenging in part the parole term for the kidnapping count. The district court denied the motion, and on appeal, this court affirmed the district court's decision in part and reversed and remanded in part with instructions for the district court to correct the judgment of conviction to reflect that the kidnapping count carried a parole eligibility term of five years.³ On October 6, 2004, the district court amended the judgment of conviction pursuant to this court's directions.

On November 2, 2006, appellant filed a proper person motion to correct or modify sentence in the district court. The State opposed the motion. On November 29, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegally imposed in the instant case. Appellant claimed that the State erroneously included the deadly weapon enhancement language in the counts involving the primary offenses. Appellant asserted that the deadly weapon enhancement was a separate offense and should have been charged separately. Appellant further claimed that this error was a violation of the separation of powers.

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

³Labori v. State, Docket No. 41207 (Order Affirming in Part, Reversing in Part and Remanding, July 22, 2004).

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

'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 A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."⁶ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁷

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's challenge to the deadly weapon enhancement fell outside the very narrow scope of claims permissible in either a motion to correct or motion to modify sentence. Appellant's sentences were facially legal, and appellant failed to demonstrate that the district court was without jurisdiction in the instant case.⁸ Appellant further failed to demonstrate that the district court relied upon any mistakes about his criminal record that worked to his extreme detriment. As a separate and independent ground to deny relief, appellant's challenge was without merit. NRS 193.165(2) specifically provides that NRS 193.165 does not create a separate offense, but rather provides an additional penalty for the primary offense. The fact that the deadly weapon enhancement was charged in the same counts as the

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

⁶Id.


⁷Id. at 708-09 n.2, 918 P.2d at 325 n.2.

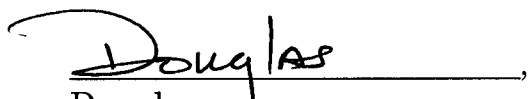
⁸NRS 200.320(2)(a); NRS 200.366(2)(b); NRS 193.165; NRS 453.336.

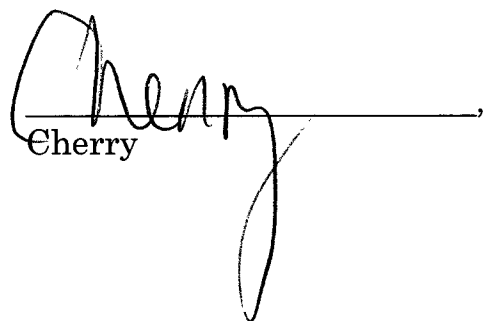
primary offenses does not invalidate his conviction. Therefore, we affirm the order of the district court denying appellant's motion.

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

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