

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAPPY OUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49031

FILED

JUL 05 2007

WANNETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING APPEAL IN PART

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence and a motion to dismiss count of indictment for failure to state crime. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On March 31, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 36 to 120 months in the Nevada State Prison. No direct appeal was taken.

On January 17, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. On that same date, appellant also filed a motion to dismiss count of indictment for failure to state crime. The State opposed the motions. On February 9, 2007, the district court denied appellant's motion. This appeal followed.

In his motion to correct an illegal sentence, appellant contended that his sentence was unconstitutionally enhanced as no finding was made by the jury that he had used a deadly weapon in the

commission of a crime and other aggravating factors were not presented to a jury. Appellant relied upon Apprendi v. New Jersey¹ and its progeny. Appellant further claimed that the State improperly charged the deadly weapon enhancement in the same count as the primary offense and that a deadly weapon was a necessary element of voluntary manslaughter.

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.² "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.'"³

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was not a competent court of jurisdiction.⁴ Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant pleaded guilty to voluntary manslaughter with the use of a deadly weapon, and appellant admitted to the facts supporting the deadly weapon enhancement. Thus, the district court properly imposed the deadly

¹530 U.S. 466 (2000).

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

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴See NRS 200.080; NRS 193.165.

weapon enhancement.⁵ The other factors considered by the district court at sentencing did not increase his sentence beyond the statutory maximum, and thus, these factors were not required to be presented to a jury. Further, there was nothing improper in charging the deadly weapon enhancement in the same count as the primary offense, and a deadly weapon is not a necessary element of the voluntary manslaughter.⁶ Therefore, we affirm this portion of the district court's order.

Finally, to the extent that appellant attempted to appeal from the denial of his motion to dismiss a count of the indictment, this court's review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.⁷ No statute or court rule provides for an appeal from an order denying the aforementioned motion. Therefore, we dismiss this portion of the appeal.

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

⁵See 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).

⁶See NRS 200.040; NRS 200.050.

⁷Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

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

ORDER the judgment of the district court AFFIRMED in part
and the appeal DISMISSED in part.

Maupin, C.J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
Happy Oum
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk