

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT P. CLARK A/K/A ROBERT  
CLARK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49116

**FILED**

**JUL 24 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Young*  
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 19, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison. No direct appeal was taken.

On February 21, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On March 13, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court erred in adjudicating him a habitual criminal because the State did not amend the information to include a habitual criminal count. Appellant argued that a notice of intent to seek habitual criminal adjudication does not equate to the filing of a count. Appellant further claimed that the district court erred in adjudicating appellant a habitual criminal without

first setting forth a sentence for the primary offense before invoking habitual criminal treatment. Finally, appellant claimed that the district court should have conducted separate hearings on the prior convictions and what aggravating and mitigating factors warranted his sentence.

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.<sup>1</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>2</sup>

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 appellant did not demonstrate that the district court was not a competent court of jurisdiction.<sup>3</sup> Appellant's specific challenges to his adjudication as a habitual criminal fell outside the scope of claims permissible in a motion to correct an illegal sentence. Moreover, as a separate and independent ground to deny relief, appellant's claims lacked merit. The record on appeal reveals that the State included a notice of its

---

<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

<sup>3</sup>See NRS 207.010(1)(b)(3).

intention to seek habitual criminal adjudication with the charging information. "[A]djudication under the habitual criminal statute constitutes a status determination and not a separate offense."<sup>4</sup> A habitual criminal allegation is included in a charging document "merely to provide notice to the defendant that the state is seeking enhancement of penalty."<sup>5</sup> Any alleged error in not labeling the habitual criminal allegation as a "count" does not warrant relief. Further, no substantial rights were prejudiced as a result of the district court's alleged failure to sentence on the primary offense before invoking the habitual criminal enhancement; appellant agreed to large habitual criminal treatment and stipulated to a sentence of ten to twenty-five years as part of his plea agreement.<sup>6</sup> The district court was not required to conduct separate hearings in the instant case, and there was no right to a jury trial in the instant case.<sup>7</sup> Therefore, we affirm the order of the district court.

---

<sup>4</sup>Schneider v. State, 97 Nev. 573, 575, 635 P.2d 304, 305 (1981); see also State v. Bardmess, 54 Nev. 84, 91, 7 P.2d 817, 818 (1932) (holding that a statement of a previous conviction does not charge an offense, but rather it is only the averment of a fact which may affect the punishment).

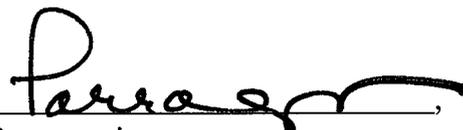
<sup>5</sup>Parkerson v. State, 100 Nev. 222, 224, 678 P.2d 1155, 1156 (1984).

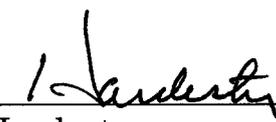
<sup>6</sup>In exchange for his guilty plea, appellant avoided one count of escape, three counts of possession of a credit or debit card without the cardholder's consent and possession of drug paraphernalia. Further, the State agreed not file any other charges regarding non-violent offenses, of which approximately twenty-seven offenses were being investigated.

<sup>7</sup>See O'Neill v. State, 123 Nev. \_\_\_, 153 P.3d 38 (2007) (holding no violation of the right to a jury trial in habitual criminal proceedings).

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

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

---

<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</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.