

IN THE SUPREME COURT OF THE STATE OF NEVADA

USMAN ANUKU SADIQ A/K/A USMAN
SADIQ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49175

FILED

SEP 18 2007

JANE 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 appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 14, 2003, the district court convicted appellant, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon (Count 1) and battery with the use of a deadly weapon (Count 2). The district court sentenced appellant to serve two equal and consecutive terms of 3 to 10 years for count 1, and a concurrent term of 2 to 8 years for count 2 in the Nevada State Prison. This court affirmed appellant's conviction and sentence on appeal.¹ Appellant unsuccessfully sought relief in a post-conviction petition for a writ of habeas corpus.²

On February 22, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Sadiq v. State, Docket No. 41255 (Order of Affirmance, Aug. 20, 2003).

²Sadiq v. State, Docket No. 45279 (Order of Affirmance, Jan. 19, 2006).

motion. On March 21, 2007, the district court denied appellant's motion. This appeal followed.³

In his motion, appellant claimed that (1) the district court violated appellant's due process rights when it exceeded its authority and sentenced appellant based on facts which he did not knowingly admit or which were not presented to a jury concerning the use of a deadly weapon; (2) the district court failed to enter written findings of aggravating facts; (3) the district court improperly enhanced his sentence based on his use of a deadly weapon as his use of a deadly weapon was a necessary element of voluntary manslaughter; and (4) the district court did not have jurisdiction to convict him because the complaint was defective in that there was no such crime of manslaughter with the use of a deadly weapon, and the State impermissibly combined two statutes to charge the crime.⁴

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.⁵ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

³To the extent that appellant challenged the denial of his motion for the appointment of counsel and request for an evidentiary hearing, appellant failed to demonstrate that the district court abused its discretion in denying these documents.

⁴We note that appellant only raised these claims in relation to Count 1, voluntary manslaughter with the use of a deadly weapon.

⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

challenge alleged errors in proceedings that occur prior to the imposition of sentence."⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims that the district court allegedly exceeded its authority at sentencing, violated appellant's due process rights, or failed to enter written findings were outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal,⁷ and the record does not support an argument that the district court was without jurisdiction in this matter. The State did not err, or divest the district court of jurisdiction, by charging the deadly weapon enhancement with the primary offense, as the deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense.⁸ Further, the use of a deadly weapon is not a necessary element of the crime of voluntary manslaughter.⁹ The district court was permitted to apply the deadly weapon enhancement to the voluntary manslaughter sentence based upon appellant's guilty plea.¹⁰

⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁷See NRS 200.080; 1995 Nev. Stat., ch. 455, § 1 at 1431 (NRS 193.165); 2001 Nev. Stat., ch. 33, § 2 at 381-83 (NRS 200.481).

⁸NRS 193.165(2); see Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

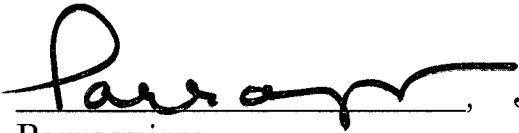
⁹See 1995 Nev. Stat., ch. 517 § 2 at 1725-26 (NRS 200.040).

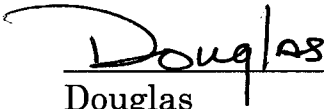
¹⁰Blakely v. Washington, 542 U.S. 296, 303-04 (2004).

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Usman Anuku Sadiq
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We 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.