

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK FUNDERBURKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49298

FILED

AUG 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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; Jackie Glass, Judge.

On August 1, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon in district court case number C136745. The district court sentenced appellant to serve two consecutive terms of 26 to 120 months in the Nevada State Prison. No direct appeal was taken.

On March 16, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 4, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegal because the fact of the deadly weapon was not presented to a jury.

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.¹ "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.'"²

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is no indication that the district court did not have jurisdiction over this matter.³ Moreover, as a separate and independent ground to deny relief, appellant's claim lacked merit. Appellant pleaded guilty to robbery with the use of a deadly weapon; and thus, the district court was permitted to apply the deadly weapon enhancement in the instant case without submitting the issue before a jury.⁴ Therefore, we affirm the order of the district court.

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

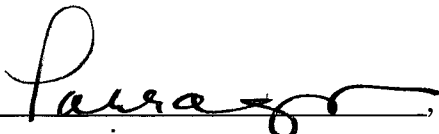
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


³See NRS 200.380(2); NRS 193.165.

⁴See Blakely v. Washington, 542 U.S. 296 (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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Patrick F. Funderburke
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).