

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JOHN PEYRONEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49306

FILED

AUG 30 2007

ORDER OF AFFIRMANCE

BY  JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

This a proper person appeal from a district court order denying appellant's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On November 4, 1993, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree murder, (count 1); one count of grand larceny, (count 2); and one count of possession of a stolen vehicle (count 3). The district court sentenced appellant to serve a prison term of life with the possibility of parole on count 1, plus an equal and consecutive term for the use of a deadly weapon, and a term of 5 years on count 2. The district court determined that count 3 merged with count 2 and thus, did not sentence appellant on that count. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on October 6, 1998.

¹Peyronel v. State, Docket No. 25317 (Order Dismissing Appeal September 14, 1998).

On March 8, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. On April 3, 2007, the district court denied the motion. This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegal because the jury did not find the facts necessary to enhance his sentence, namely that he used a deadly weapon in the commission of a crime, pursuant to NRS 193.165. Appellant claimed that the deadly weapon enhancement was improper because the jury was not presented with the issue, contrary to Apprendi v. New Jersey.² Appellant further argued that the State improperly included language relating to the deadly weapon enhancement within the count of murder. Appellant argued that because of this, the charging document was defective at the outset, and as a result the district court was without jurisdiction to hear his case. Finally, appellant argued that his sentence was improper because the use of a firearm is an element of the crime of murder.

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.³ "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to

²530 U.S. 466 (2000).

³Edwards 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."⁴

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal,⁵ and the record does not support an argument that the district court was without jurisdiction in this matter. Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Significantly, the jury found appellant guilty of using a deadly weapon in the commission of his offense. Therefore, the district court was permitted to impose the deadly weapon enhancement on the murder count and enhance appellant's sentence.⁶ Additionally, the State did not err in charging the deadly weapon enhancement along with the primary offense, as the deadly weapon enhancement constitutes an additional penalty for

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

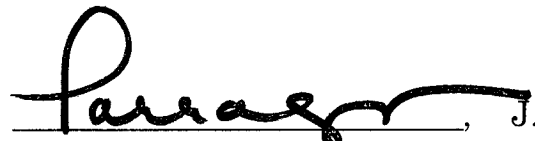
⁵See 1991 Nev. Stat., ch. 403, § 6, at 1059 (NRS 193.165); 1989 Nev. Stat., ch. 408, § 1, at 865-66 (NRS 200.030); and 1989 Nev. Stat., ch. 626, § 13, at 1443 (NRS 205.222).

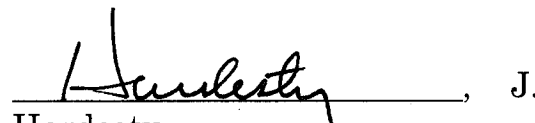
⁶See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

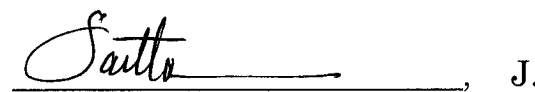
the primary offense rather than a separate offense.⁷ Finally, a deadly weapon is not a necessary element of the crime of murder.⁸

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.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Janet J. Berry, District Judge
Robert John Peyronel
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷NRS 193.165(2); see Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

⁸See NRS 200.030; Williams v. State, 99 Nev. 797, 798, 671 P.2d 635, 636 (1983).

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