

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAU DOZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49431

ESAU DOZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49446

**FILED**

DEC 28 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Castille*  
CHIEF DEPUTY CLERK

Docket Number 49431 is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Docket Number 49446 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup> Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On February 15, 2005, the district court convicted appellant pursuant to a jury trial, of two counts of robbery with the use of a firearm and one count of burglary while in possession of a firearm in district court case number CR03-1842. On that same date, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a firearm in district court case number CR04-1978. The district court sentenced appellant to serve four consecutive prison terms of 72 to 180 months and one concurrent prison term of 72 to 180 months in the Nevada

<sup>1</sup>NRAP 3(b).

State Prison in district court case number CR03-1842. The district court sentenced appellant to serve two consecutive prison terms of 72 to 180 months in the Nevada State Prison in district court case number CR04-1978. This court affirmed appellant's convictions and sentences on appeal.<sup>2</sup> The remittiturs issued on February 7, 2006.

### Motion to Correct an Illegal Sentence

On June 22, 2006, appellant filed a proper person motion to correct an illegal sentence in district court case numbers CR03-1842 and CR04-1978. On April 5, 2007, the district court denied appellant's motion. The appeal in Docket No. 49431 followed.

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>3</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>4</sup>

In his motion, appellant sought only to correct his sentence in district court case number CR03-1842. Appellant claimed that his sentence was illegal "because no where in the record or jury instructions is it explained what Dozier would receive if found guilty, nor is it explained

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<sup>2</sup>Dozier v. State, Docket No. 44908 (Order of Affirmance, January 11, 2006); Dozier v. State, Docket No. 44972 (Order of Affirmance, January 12, 2006).

<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

what a deadly weapon enhancement is, nor what it carries in regards to term(s) of imprisonment." Appellant further claimed that his sentence was illegal because the jury did not find the fact that he used a deadly weapon in the commission of the crime and that the district court, therefore, inappropriately relied upon her own fact finding in sentencing him pursuant to NRS 193.165.

Our review of the record reveals that the district court did not err in denying appellant's motion to correct an illegal sentence. Appellant's claims fell outside the scope of a motion to correct an illegal sentence.<sup>5</sup> Appellant's sentence was facially legal,<sup>6</sup> and appellant failed to demonstrate that the district court was without jurisdiction in the instant case.<sup>7</sup>

#### Petition for a Writ of Habeas Corpus

On February 12, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus designating both district court cases. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 3, 2007, the district court denied appellant's petition. The appeal in Docket No. 49446 followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>8</sup> Appellant's petition was procedurally barred absent a

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<sup>5</sup>Edwards, 112 Nev. at 708, 918 P.2d at 324.

<sup>6</sup>See NRS 200.380; 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

<sup>7</sup>Edwards, 112 Nev. at 708, 918 P.2d at 324.

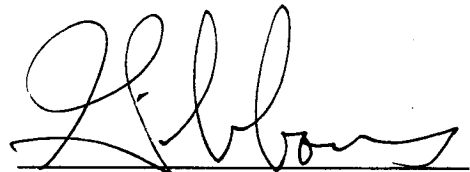
<sup>8</sup>See NRS 34.726(1).

demonstration of cause for the delay and prejudice.<sup>9</sup> Notably, this court has refused to apply the prison mailbox rule to the filing of habeas corpus petitions.<sup>10</sup>

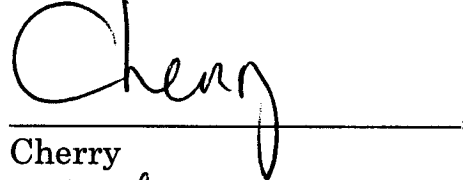
Appellant failed to set forth any reasons for delay. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

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>11</sup> Accordingly, we

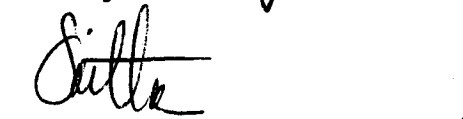
ORDER the judgments of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

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<sup>9</sup>See id.

<sup>10</sup>Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002) (refusing to accept as timely a petition filed one year and two days after this court issued the remittitur).

<sup>11</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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