IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMAR CROSBY A/K/A LAMAR ANTWAIN CROSBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49491

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY U. Quirasado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Lamar Crosby's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On July 26, 2000, Crosby was originally convicted, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced Crosby to concurrent prison terms of 24 to 156 months for each count of robbery, with equal and consecutive terms for each count for the deadly weapon enhancement. Crosby did not file a direct appeal. The district court entered an amended judgment of conviction on August 22, 2006, granting Crosby 245 days credit for presentence confinement.

On April 4, 2007, Crosby filed a proper person motion to correct an illegal sentence in the district court. In his motion, Crosby contended that the deadly weapon enhancement was illegal because the fact of the deadly weapon was not presented to a jury contrary to Apprendi v. New Jersey.[1] The State opposed the motion. On May 4, 2007, the district court denied appellant's motion.

[1]530 U.S. 466 (2000).

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.[2] "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.'"[3]

Our review of the record on appeal reveals that the district court did not err in denying Crosby's motion. Crosby's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Crosby's sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in this matter.[4] Moreover, as a separate and independent ground to deny relief, Crosby's claims were without merit. A deadly weapon is not a necessary element of the crime of robbery.[5] Crosby pleaded guilty to robbery with the use of a deadly weapon, and Crosby admitted to the facts supporting the deadly weapon enhancement. Thus, the district court was permitted to impose the deadly weapon enhancement.[6] Finally, the

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

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

[4]1989 Nev. Stat., ch. 631, § 1, 1451.

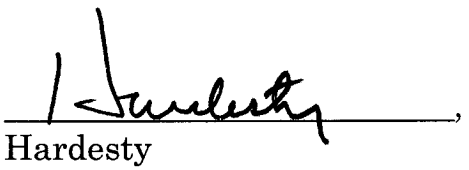
[5]See NRS 200.030; Williams v. State, 99 Nev. 797, 671 P.2d 635 (1983).

[6]See 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").

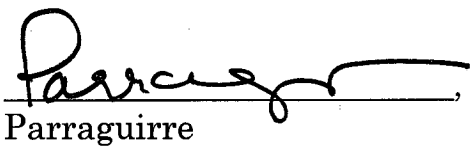
district court did not abuse its discretion in denying Crosby's request for the appointment of counsel.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Crosby is not entitled to relief and that briefing and oral argument are unwarranted.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]



_____, J.
Hardesty



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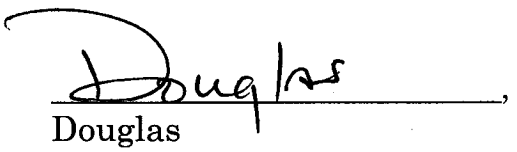
Parraguirre



_____, J.
Douglas

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

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

[8]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.