

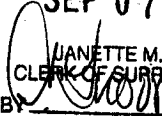
IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND LEE MEDINA, JR. A/K/A  
RAYMOND L. MEDINA A/K/A  
RAYMOND MEDINA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49499

**FILED**

SEP 07 2007

JUANETTE 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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; David Wall, Judge.

On December 2, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison for the attempted murder count and two consecutive terms of 36 to 120 months for the robbery count, the latter to be served concurrently to the former. This court affirmed the judgment of conviction on direct appeal.<sup>1</sup>

On April 2, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. Appellant also filed a motion for the appointment of counsel and request for an evidentiary

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<sup>1</sup>Medina v. State, Docket No. 46404 (Order of Affirmance, May 26, 2006).

hearing. The State opposed the motions and request. On May 4, 2007, the district court denied appellant's motions and request. This appeal followed.<sup>2</sup>

In his motion to correct an illegal sentence, appellant contended that his sentence was unconstitutionally enhanced because he was denied the right to a jury trial on the sentencing enhancements. Appellant relied upon Apprendi v. New Jersey<sup>3</sup> and its progeny, and appellant apparently believed that his conviction was based upon a guilty plea. Appellant further claimed that the State improperly charged the deadly weapon enhancements in the same counts as the primary offenses and that a deadly weapon was a necessary element of attempted murder and robbery. Finally, appellant claimed that he should have his deadly weapon enhancements reduced pursuant to 2007 legislative amendments to NRS 193.165.

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>4</sup> "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

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<sup>2</sup>To the extent that appellant appealed the denial of the motion for the appointment of counsel and request for an evidentiary hearing, we conclude that the district court did not abuse its discretion in denying his motion or request.

<sup>3</sup>530 U.S. 466 (2000).

<sup>4</sup>Edwards 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."<sup>5</sup>

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 sentence was facially legal, and there is no indication that the district court was not a competent court of jurisdiction.<sup>6</sup> Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant's convictions for attempted murder with the use of a deadly weapon and robbery with the use of a deadly weapon were based upon jury verdicts finding that appellant had used a deadly weapon during the commission of his offenses. Thus, the district court properly imposed the deadly weapon enhancements.<sup>7</sup> Further, there was nothing improper in charging the deadly weapon enhancements in the same counts as the primary offenses,

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<sup>5</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>6</sup>See NRS 200.030 (providing that murder, whether first or second degree, is a category A felony); NRS 193.330(1)(a)(1) (providing for a penalty of not less than 2 years nor more than 20 years for the attempt to commit a category A felony); NRS 200.380(2) (providing for a penalty of not less 2 years nor more than 15 years for the offense of robbery); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

<sup>7</sup>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") (emphasis in original).

and a deadly weapon is not a necessary element of attempted murder or robbery.<sup>8</sup> Finally, appellant was not entitled to have the 2007 legislative amendments reducing the penalty for the deadly weapon enhancement applied to the instant case as his crime was committed March 1, 2005, and the 2007 legislative amendments were effective July 1, 2007, and do not apply retroactively.<sup>9</sup> Therefore, we affirm the district court's order denying appellant's motion.

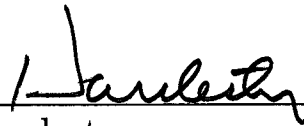
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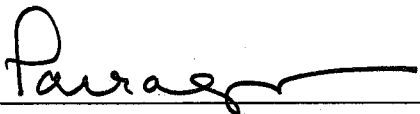
<sup>8</sup>See NRS 193.165(2) (providing that the deadly weapon enhancement does not create a separate offense but provides an additional penalty for the primary offense); NRS 200.010(1) (defining the crime of murder, in pertinent part, as the unlawful killing of a human being with malice aforethought, either express or implied); NRS 193.330(1) (defining an act done with the intent to commit a crime, and tending but failing to accomplish the act as an attempt); NRS 200.380(1) (defining the crime of robbery as the unlawful taking of personal property from the person or presence of another against his will by means of force or violence or fear of injury); see also Williams v. State, 99 Nev. 797, 671 P.2d 635 (1983) (holding that a deadly weapon was not a necessary element of the crimes of attempted murder or murder).

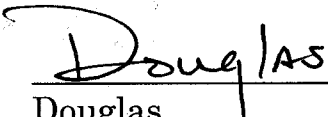
<sup>9</sup>See 2007 Nev. Stat., ch. \_\_\_, §§ 13, 22, at \_\_\_, \_\_\_ (Assembly Bill 510: Section 13 amending NRS 193.165 to reduce the deadly weapon enhancement penalty, and Section 22 providing that the amendatory provisions become effective July 1, 2007); see also Sparkman v. State, 95 Nev. 76, 590 P.2d 151 (1979) (recognizing that the general rule for determining the proper penalty is the penalty that is in effect at the time of the commission of the offense); NRS 193.130(1) (providing that a person convicted of a felony must be sentenced within the limits of the applicable statute, unless the statute in force at the time of the commission of the felony prescribed a different penalty).

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. David Wall, District Judge  
Raymond Lee Medina Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).