

IN THE SUPREME COURT OF THE STATE OF NEVADA

DATARI WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49707

FILED

OCT 03 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 18, 2004, the district court convicted appellant, pursuant to a guilty plea, of conspiracy to commit robbery (Count 1) and robbery with the use of a deadly weapon (Count 2). The district court sentenced appellant to serve a term of 12 to 34 months for Count 1 and two equal and consecutive terms of 24 to 120 months for Count 2 in the Nevada State Prison. Appellant did not file a direct appeal. Appellant unsuccessfully sought relief in a post-conviction petition for writ of habeas corpus in the district court. Appellant did not appeal the denial of his post-conviction petition for writ of habeas corpus.

On May 1, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 5, 2007, the district court denied appellant's motion. This appeal followed.¹

¹To the extent that appellant challenged the denial of his motion to appoint counsel and request for an evidentiary hearing, appellant failed to
continued on next page . . .

In his motion, appellant contended that (1) the district court lacked jurisdiction to proceed because the complaint impermissibly joined the offense of robbery with the deadly weapon enhancement; (2) appellant's sentence for robbery with the use of a deadly weapon violated Apprendi v. New Jersey² and Blakely v. Washington,³ because the deadly weapon enhancement was not charged in the information as a special finding, was not presented to a jury, and required judicial fact-finding beyond the existence of prior felonies; (3) appellant's plea was not knowing and voluntary; and (4) the trial court failed to enter written findings.⁴

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.⁵ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

... continued

demonstrate that the district court abused its discretion in denying these motions.

²530 U.S. 466 (2000).

³542 U.S. 296 (2004).

⁴We note that appellant only raised these claims in relation to Count 2, robbery with the use of a deadly weapon.

⁵Edwards 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."⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims that his guilty plea was not voluntary, the district court allegedly exceeded its authority at sentencing, and the district court failed to enter written findings, were outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal,⁷ and the record does not support an argument that the district court was without jurisdiction in this matter. The State did not err, or divest the district court of jurisdiction, by charging the deadly weapon enhancement with the primary offense, as the deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense.⁸ The district court was permitted to apply the deadly weapon enhancement to the robbery sentence based upon appellant's guilty plea.⁹ Therefore, we affirm the order of the district court.

⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

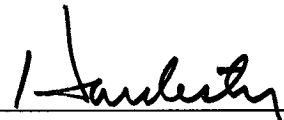
⁷See NRS 199.480; NRS 200.380; 1995 Nev. Stat., ch. 455, § 1 at 1431 (NRS 193.165).

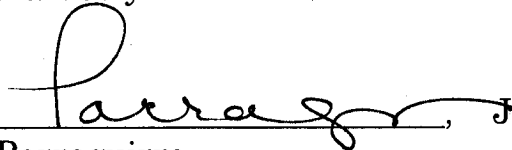
⁸1995 Nev. Stat., ch. 455, § 1 at 1431 (NRS 193.165(2)); see Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

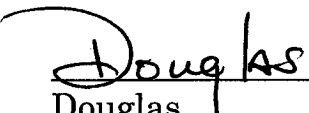
⁹Blakely, 542 U.S. at 303-04.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Datari Williams
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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