

IN THE SUPREME COURT OF THE STATE OF NEVADA

REX ALVIN JIMERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49711

FILED

NOV 08 2007

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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; Kenneth C. Cory, Judge.

On May 22, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of thirty-six to ninety-six months in the Nevada State Prison. Appellant did not file a direct appeal.

On December 14, 2004, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On January 11, 2005, the district court denied appellant's motion. This court affirmed the order of the district court on appeal.¹

On May 1, 2007, appellant filed another proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Jimerson v. State, Docket No. 44593 (Order of Affirmance, April 22, 2005).

motion. On May 23, 2007, the district court denied the motion. This appeal followed.

In his motion, appellant contended that the district court unconstitutionally enhanced his sentence because a jury did not make the determination that he intended to use a deadly weapon in the commission of the offense or that he was in possession of a deadly weapon. He further argued that he did not waive his right to a jury determination as to the use of a deadly weapon and did not waive his right to contest that he used a deadly weapon. Defendant finally asserted that the use of a deadly weapon was an essential element of the crime of voluntary manslaughter, and therefore his sentence could not be enhanced under 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.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 this motion. Appellant challenged the deadly weapon enhancement in his prior motion to correct an illegal sentence.

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

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

This court rejected his challenge in the appeal from the denial of his prior motion to correct an illegal sentence.⁴ Therefore, the doctrine of law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁵ Moreover, appellant's sentence was facially legal and there was no indication that the district court was without jurisdiction in this matter.⁶ Appellant entered a guilty plea to the crime of voluntary manslaughter with the use of a deadly weapon and he may not challenge the validity of this plea in a motion to correct an illegal sentence. Additionally, use of a deadly weapon is not a necessary element of voluntary manslaughter.⁷

To the extent that appellant sought to modify his sentence, appellant failed to show that the sentence was based on any mistaken assumptions about his criminal record which worked to his extreme detriment.⁸ Therefore, we affirm the order of the district court.

⁴Jimerson v. State, Docket No. 44593 (Order of Affirmance, April 22, 2005).

⁵Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

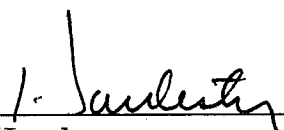
⁶See NRS 200.080 (setting forth the penalty for voluntary manslaughter); (1995 Nev. Stat., ch. 455, § 1, at 1431) (NRS 193.165) (setting forth the penalty for deadly weapon enhancement).


⁷See NRS 200.080.

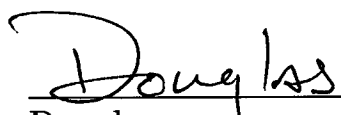
⁸Edwards, 112 Nev. at 708, 918 P.2d at 324 (holding that a motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment").

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.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Kenneth C. Cory, District Judge
Rex Alvin Jimerson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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