

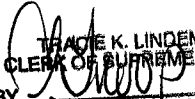
IN THE SUPREME COURT OF THE STATE OF NEVADA

JERMAINE ROBINSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49940

**FILED**

JAN 15 2008

TRACEE K. LINDEMAN  
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. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On January 11, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 33 to 84 months in the Nevada State Prison. No direct appeal was taken.

On March 27, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion, and appellant filed a reply. On July 3, 2007, the district court denied appellant's motion. This appeal followed.

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 deadly weapon enhancement. Despite the fact that appellant entered a guilty plea to robbery with the

use of a deadly weapon, appellant claimed that Apprendi v. New Jersey<sup>1</sup> and its progeny stood for the proposition his sentence for robbery could not be enhanced without a jury determination on the deadly weapon enhancement. Appellant also claimed that the State improperly charged the deadly weapon enhancement in the same count as the primary offense of robbery. It further appears that appellant claimed that a deadly weapon was a necessary element of robbery because it was used to accomplish the fear or force element of robbery. Finally, it appears that appellant claimed that a gun is not a deadly weapon unless it is fired during the robbery. For all of these reasons, appellant claimed that his guilty plea was not knowingly and voluntarily entered.

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>2</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>3</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

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<sup>1</sup>530 U.S. 466 (2000).

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

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

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>4</sup> Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant entered a guilty plea to robbery with the use of a deadly weapon; thus, the district court properly imposed the deadly weapon enhancement.<sup>5</sup> Further, there was nothing improper in charging the deadly weapon enhancement in the same count as the primary offense, and a deadly weapon is not a necessary element of robbery.<sup>6</sup> The gun was not required to be fired for the deadly weapon enhancement to be applicable.<sup>7</sup> Finally, appellant may not

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<sup>4</sup>See NRS 200.380(2) (providing for a penalty of not less 2 years nor more than 15 years for the offense of robbery); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165) (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

<sup>5</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).


<sup>6</sup>See 1995 Nev. Stat., ch. 455, § 1, at 1431 (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 200.380(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). Notably, the use of a gun is not a necessary element of robbery.

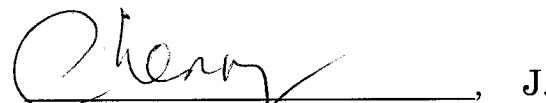
<sup>7</sup>See Culverson v. State, 95 Nev. 433, 435, 596 P.2d, 220, 221 (1979) (recognizing that there need not be conduct that actually causes harm but only conduct which produces a fear of harm or death by the display of the deadly weapon during the commission of the crime).


challenge the validity of his guilty plea in a motion to correct an illegal sentence.<sup>8</sup> Therefore, we affirm the order of the district court denying appellant's motion.

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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Connie J. Steinheimer, District Judge  
Jermaine Robinson  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>8</sup>See Edwards, 112 Nev. at 708-09 n.2, 918 P.2d at 325 n.2.

<sup>9</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).