

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN ANTHONY STONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50133

FILED

FEB 29 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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; Brent T. Adams, Judge.

On December 20, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal.¹ Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

¹Stone v. State, Docket No. 37276 (Order of Affirmance, March 23, 2001).

²Stone v. Warden, Docket No. 38610 (Order of Affirmance, November 6, 2002).

On June 21, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. On August 8, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that he was not properly provided notice of the State's theory that the crime was committed with express malice and premeditation. Appellant further claimed that the jury instructions improperly introduced these elements and that his trial counsel was ineffective for failing to object to certain instructions.

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was not a

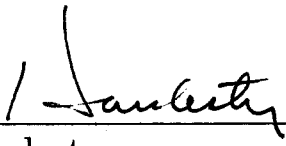
³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

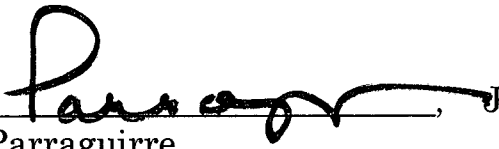
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

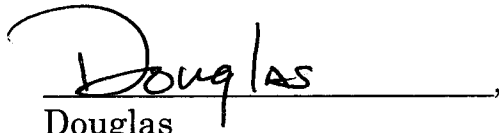
competent court of jurisdiction.⁵ Therefore, we affirm the order of the district court.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Kevin Anthony Stone
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵See 193.330(1)(a)(1); 1999 Nev. Stat., ch. 319, § 3, at 1335-36 (NRS 200.030); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).