IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KEITH LAWHORN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50230

FILED

MAR 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE AND DIRECTING DISTRICT COURT TO CORRECT A CLERICAL ERROR IN THE JUDGMENT OF CONVICTION

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 April 12, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary (counts 1 and 2) in violation of NRS 205.060(1). The district court sentenced appellant to serve in the Nevada State Prison a term of 6 to 15 years for count 1 and a concurrent term of 3 to 10 years for count 2. No direct appeal was taken.

On July 24, 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 September 7, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the sentence for count 1 exceeded the statutory maximum for burglary in violation of NRS 205.060(1) because the judgment of conviction and criminal information did not set forth that he was subject to the enhanced penalty set forth in NRS 205.060(4). Appellant claimed that he should only receive a 2 to 5 year sentence for count 1.

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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.[1] "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.'"[2]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence for count 1 did not exceed the statutory maximum in the instant case.[3] NRS 205.060(1) sets forth the definition and elements of the crime of burglary. The penalties for a defendant who commits burglary are set forth in NRS 205.060(2) and (4). A criminal defendant who commits the crime of "simple" burglary is subject to a term of imprisonment of not less than 1 year nor more than 10 years; however, a criminal defendant who commits the crime of burglary and possesses or gains possession of a firearm at any time during the commission of the crime is subject to a term of imprisonment of not less than 2 years nor more than 15 years.[4] Although the criminal information, guilty plea agreement, and judgment of conviction did not specifically reference NRS 205.060(4), the record on

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

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

[3]See 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060(4)).

[4]See id. (NRS 205.060(2), (4)).

appeal clearly demonstrates that appellant was aware that he was pleading guilty to one count of "simple" burglary and one count of "enhanced" burglary. The criminal information and guilty plea agreement referenced the fact that in committing the burglary in count 1 appellant gained possession of a firearm. During the guilty plea canvass, when asked the potential penalties for counts 1 and 2, appellant correctly informed the district court that count 1 had a potential penalty of 2 to 15 years while count 2 had a potential penalty of 1 to 10 years. The guilty plea agreement further correctly informed appellant of the penalties, and a letter sent by trial counsel to appellant, which was attached to appellant's motion to correct, sets forth that appellant was entering a guilty plea to one count of "simple" burglary and one count of "enhanced" burglary. The district court correctly concluded that omission of subsection (4) of NRS 205.0600 in the judgment of conviction was a clerical error that did not render the sentence illegal in the instant case. We agree and affirm the order of the district court denying appellant's motion.

However, in light of the confusion engendered by the omission of subsection (4) of NRS 205.0600 in the judgment of conviction, we direct the district court to enter a corrected judgment of conviction reflecting that the sentence imposed in count 1 was pursuant to NRS 205.060(4).

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.[5] Accordingly, we

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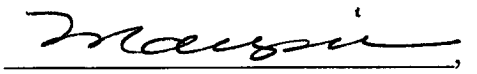
[5]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED and DIRECT the district court to correct the clerical error in the judgment of conviction.[6]



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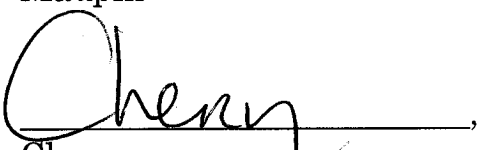

_____, J.
Cherry

_____, J.
Saitta

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

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[6]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.