

IN THE SUPREME COURT OF THE STATE OF NEVADA

UBALDO GOMEZ A/K/A JORGE  
VALDIVIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50352

**FILED**

AUG 29 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion for sentence modification or to correct an illegal sentence. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On October 22, 1997, the district court convicted appellant, pursuant to a guilty plea, of first-degree kidnapping with the use of a deadly weapon. The district court sentenced appellant to serve two equal and consecutive terms of life in the Nevada State Prison with the possibility of parole after five years. No direct appeal was taken.

On July 9, 2007, appellant filed a proper person motion for sentence modification or to correct an illegal sentence in the district court.

The State opposed the motion. On October 2, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that amendments to NRS 193.165 should apply retroactively, which would entitle appellant to a new sentencing hearing. In 2007, the legislature amended NRS 193.165 to reduce the term for a deadly weapon enhancement from an equal and consecutive term to a minimum term of not less than one year and a maximum term of not more than 20 years.<sup>1</sup>

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> "[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal

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<sup>1</sup>See 2007 Nev. Stat., ch. 525, § 13, at 3188-89.

<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)).

record which work to the defendant's extreme detriment."<sup>4</sup> A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>5</sup>

Our review of the record on appeal reveals that appellant's claim fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Appellant's sentence was facially legal.<sup>6</sup> Further, the recent amendments to NRS 193.165 do not apply to appellant's sentence.<sup>7</sup> Moreover, the record does not indicate that the district court was without jurisdiction. Therefore, the district court did not err in denying this motion.

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<sup>4</sup>Id.

<sup>5</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

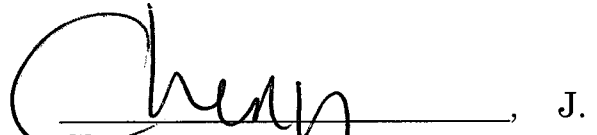
<sup>6</sup>See NRS 200.080; 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

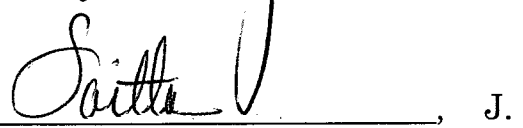
<sup>7</sup>See State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 54, July 24, 2008) (concluding that "the penalty for the use of a deadly weapon should be the one in effect at the time the defendant used a weapon to commit the primary offense").

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

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

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

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

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>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.

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