

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUGUST ANTHONY ARDAGNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50399

FILED

APR 10 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 to correct an illegal sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On January 30, 1991, the district court convicted appellant, pursuant to a guilty plea, of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. Appellant did not file a direct appeal.

On July 19, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. On October 5, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that application of NRS 193.165, the deadly weapon enhancement, violated article 1, section 8 of the Nevada Constitution because the statute allows for the imposition of two punishments for a single offense.

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 sentences were facially legal, and there is no indication that the district court was without jurisdiction in this matter.³ Appellant’s challenge to NRS 193.165 fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. As a separate and independent ground to deny relief, appellant’s claim is without merit. The deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense and imposition of the enhancement does not violate the double jeopardy clause of the Nevada Constitution.⁴

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

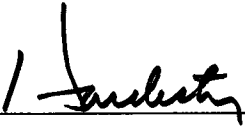
²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

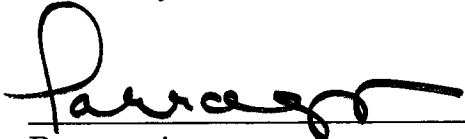
³See 1989 Nev. Stat., ch. 282, § 9, at 589 (NRS 200.010); 1989 Nev. Stat., ch. 631, § 1, at 1451 (NRS 200.030); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165).

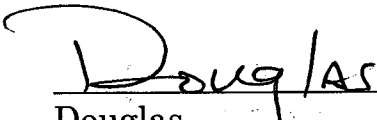
⁴See Woofter v. O’Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975). While Woofter upheld the constitutionality of NRS 193.165 against attacks based on the double jeopardy clause of the United States Constitution, the same reasoning applies to the Nevada Constitution.

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

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

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

⁶We 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.