

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLYDE STEVEN BIBBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50474

FILED

MAR 10 2008

TRACIE 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 appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 10, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count each of conspiracy to commit robbery (count I), burglary while in the possession of a firearm (count II), robbery with the use of a deadly weapon (count III), failure to stop on the signal of a police officer (count IV), and possession of a controlled substance (count V).¹ The district court sentenced appellant to serve a prison term of 12 to 36 months for count I, a concurrent prison term of 36 to 72 months for count II, two consecutive prison terms of 36 to 120 months for count III, a consecutive prison term of 12 to 48 months for

¹On September 24, 2003, an amended judgment of conviction was entered modifying the sentence for count II to a term of 28 to 72 months.

count IV, and a concurrent prison term of 12 to 34 months for count V. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on November 18, 2003. Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.³

On October 1, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On October 29, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant challenged the validity of the sentence imposed for count III, robbery with the use of a deadly weapon. Appellant contended that the statute governing the deadly weapon enhancement, NRS 193.165, violates double jeopardy because it constitutes a separate penalty.

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.⁴ "A motion to correct an illegal sentence

²Bibby v. State, Docket No. 40777 (Order of Affirmance, November 21, 2003).

³Bibby v. State, Docket No. 47279 (Order of Affirmance, November 13, 2006).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal,⁶ and the record does not support an argument that the district court was without jurisdiction in this matter. As a separate and independent ground to deny relief, appellant's argument lacked 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.⁷

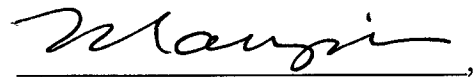
⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶See NRS 199.480(1)(a); NRS 200.380; 1995 Nev. Stat., ch. 455 § 1, at 1431 (NRS 193.165); 1997 Nev. Stat., ch. 203 § 25, at 547 (NRS 484.348); NRS 453.336.

⁷See Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975); Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987).

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

cc: Hon. Lee A. Gates, District Judge
Clyde Steven Bibby
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

