

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY JEFFERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50619

**FILED**

SEP 25 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. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 24, 2003, the district court convicted appellant, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two equal and consecutive terms of 24 to 120 months in the Nevada State Prison. No direct appeal was taken.

On August 27, 2007, appellant filed a proper person motion 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 contended that his plea was involuntary because (1) the district court failed to advise appellant of his right to a trial and proof beyond a reasonable doubt concerning facts

related to the crime and the deadly weapon enhancement, (2) the district court failed to inform appellant of the different tests regarding the deadly weapon enhancement and how they applied to his case, (3) the plea canvass was inadequate to determine if appellant was aware of the nature of the rights he waived with his guilty plea, (4) appellant did not receive the sentence for which he bargained in the plea agreement, and (5) appellant was not aware that the State would have had to prove his prior convictions to a jury beyond a reasonable doubt when appellant waived that right and admitted to the prior convictions. Appellant also claimed that (1) the district court failed to determine if appellant was acting in self-defense, (2) the deadly weapon enhancement was not proven beyond a reasonable doubt, and (3) appellant's counsel was ineffective for failing to file a notice of appeal. In addition, appellant claimed that he was entitled to a reduction due to the 2007 amendments to NRS 193.165, which reduced 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

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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).

'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>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims concerning the validity of his guilty plea, the district court's failure to take certain facts related to elements of the crime into consideration, and appellant's counsel's ineffectiveness fell outside the scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal.<sup>4</sup> Further, the recent amendments to NRS 193.165 do not apply to appellant's sentence.<sup>5</sup> Moreover, the record does not indicate that the district court was without jurisdiction. Therefore, we affirm the order of the district court.

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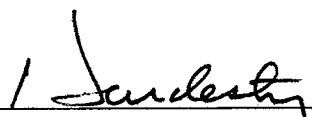
<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

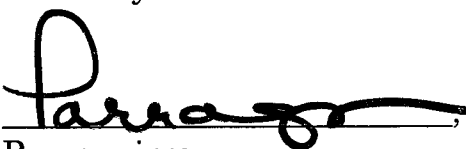
<sup>4</sup>See NRS 200.080; 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

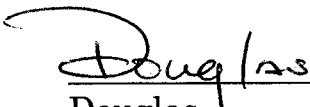
<sup>5</sup>See State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 54, July 24, 2008) (concluding that "the penalty for the use of a deadly weapon should be the one in effect at the time the defendant used a weapon to commit the primary offense").

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Donald M. Mosley, District Judge  
Jeffrey Jefferson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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