

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAU DOZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50794

ESAU DOZIER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50795

**FILED**

MAR 27 2008

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from an order of the district court denying a motion to correct an illegal sentence in district court case numbers CR03-1842 and CR04-1978. We elect to consolidate these appeals for disposition.<sup>1</sup> Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On February 15, 2005, the district court convicted appellant pursuant to a jury verdict, of two counts of robbery with the use of a firearm and one count of burglary while in possession of a firearm in district court case number CR03-1842. On that same date, the district court convicted appellant, pursuant to a guilty plea, of one count of

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<sup>1</sup>NRAP 3(b).

robbery with the use of a firearm in district court case number CR04-1978. The district court sentenced appellant to serve four consecutive prison terms of 72 to 180 months and one concurrent prison term of 72 to 180 months in the Nevada State Prison in district court case number CR03-1842. The district court sentenced appellant to serve two consecutive prison terms of 72 to 180 months in the Nevada State Prison in district court case number CR04-1978. This court affirmed appellant's convictions and sentences on appeal.<sup>2</sup> The remittiturs issued on February 7, 2006. Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus and a motion to correct an illegal sentence.<sup>3</sup>

On September 4, 2007, appellant filed a proper person motion to correct an illegal sentence challenging the sentences imposed in district court case numbers CR03-1842 and CR04-1978. On December 6, 2007, the district court denied appellant's motion. These appeals follow.

In his motion, appellant contended that the statute governing the deadly weapon enhancement, NRS 193.165, violates the double jeopardy clause by punishing him twice for the same crime. Appellant therefore argued that the imposition of the deadly weapon enhancements rendered his sentences illegal.

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<sup>2</sup>Dozier v. State, Docket No. 44908 (Order of Affirmance, January 11, 2006); Dozier v. State, Docket No. 44972 (Order of Affirmance, January 12, 2006).

<sup>3</sup>Dozier v. State, Docket Nos. 49431 and 49446 (Order of Affirmance, December 28, 2007).

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>4</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>5</sup>

Our review of the record reveals that the district court did not err in denying appellant’s motion to correct an illegal sentence. Appellant’s claims fell outside the scope of a motion to correct an illegal sentence.<sup>6</sup> Appellant’s sentences were facially legal,<sup>7</sup> and appellant failed to demonstrate that the district court was without jurisdiction in the instant cases.<sup>8</sup>

As a separate and independent ground for denying relief, appellant’s claim lacked merit. The deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a

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

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

<sup>6</sup>Edwards, 112 Nev. at 708, 918 P.2d at 324.

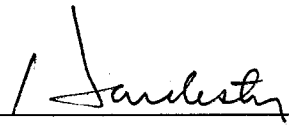
<sup>7</sup>See NRS 200.380; 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

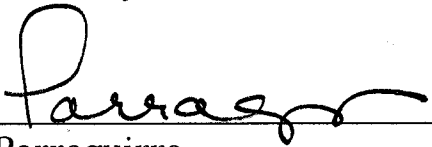
<sup>8</sup>Edwards, 112 Nev. at 708, 918 P.2d at 324.

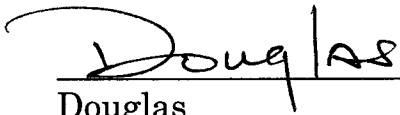
separate offense and imposition of the enhancement does not violate the double jeopardy clause.<sup>9</sup>

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Janet J. Berry, District Judge  
Esau Dozier  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>9</sup>See Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975). See also Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987) (holding that there is "no conflict between the penalty imposed by NRS 193.165 and the double jeopardy clause of the United States Constitution.")

<sup>10</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).