

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAUSTEVEION DELANO JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50932

FILED

JUL 16 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct, reduce or set aside an illegal sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On July 15, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault and one count of attempted sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for the sexual assault count and two consecutive terms of 48 to 120 months for the attempted sexual assault, the latter to be served consecutively to the former. No direct appeal was taken.

On December 1, 2007, appellant filed a proper person motion to correct, reduce or set aside an illegal sentence in the district court. The State opposed the motion. On December 27, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court improperly imposed the deadly weapon enhancement because in entering his plea he did not admit to facts supporting the deadly weapon enhancement or waive a jury trial on the issue of the deadly weapon enhancement. Appellant further claimed that consecutive sentences violated double jeopardy. Finally, appellant claimed that he received ineffective assistance of counsel and his plea was not entered voluntarily and knowingly.

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 A motion to modify a sentence “is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.”³ A motion to

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)).

³Edwards, 112 Nev. at 708, 918 P.2d at 324.

correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁴

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's claims fell outside the scope of claims permissible in a motion to correct an illegal sentence and a motion to modify a sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction.⁵ Appellant failed to demonstrate that his sentence was based upon a mistaken assumption about his criminal record that worked to his extreme detriment. Moreover, as a separate and independent ground to deny relief, appellant's claims relating to the deadly weapon enhancement were without merit. In entering his guilty plea to attempted sexual assault with the use of a deadly weapon, appellant admitted to the facts supporting the elements of the offense and expressly waived his right to a jury trial; thus, the district court properly imposed the deadly weapon enhancement.⁶ Therefore, we affirm the order of the district court denying the motion.


⁴Id. at 708-09 n.2, 918 P.2d at 325 n.2.

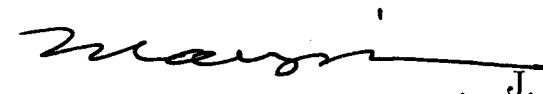
⁵See 1999 Nev. Stat., ch. 105, § 23, at 431-32 (setting forth the 1997 amendments to NRS 200.366); NRS 193.330(1)(a)(1); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

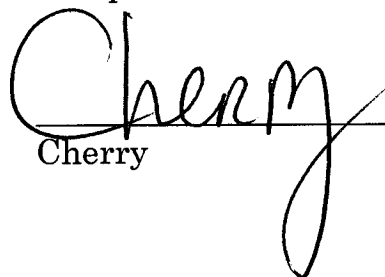
⁶See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis *continued on next page . . .*

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

... continued

of the facts reflected in the jury verdict or admitted by the defendant")
(emphasis in original).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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. Michelle Leavitt, District Judge
Lausteveion Delano Johnson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk