

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMONDRAY D. MAYO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51040

**FILED**

JAN 30 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to correct an illegal sentence or, alternatively, to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On April 17, 2007, the district court convicted appellant Demondray D. Mayo, pursuant to a guilty plea, of one count of second-degree murder with use of a deadly weapon. The district court sentenced Mayo to serve a term of life in prison with the possibility of parole after ten years for second-degree murder and an equal and consecutive sentence of life in prison with the possibility of parole after 10 years for the use of a deadly weapon. Mayo did not file an appeal from the judgment of conviction.

Mayo raises two issues in this appeal. First, in his motion to correct an illegal sentence, Mayo argues that his sentence is illegal because his counsel was ineffective for failing to wait for the passage of

Assembly Bill 510, which changed the penalties for the deadly weapon enhancement, before allowing Mayo to plead guilty.

To the extent that Mayo challenges his sentence as being illegal, 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. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “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.’” Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). A motion to correct a sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied. Id. at 708-09 n.2, 918 P.2d at 325 n.2.

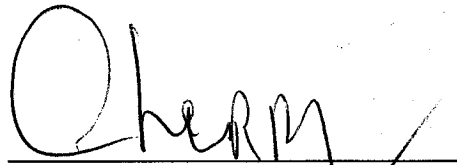
Here, Mayo’s sentence was facially legal, and there is no indication that the district court was without jurisdiction. See NRS 200.030 (setting forth term of life in prison with parole after 10 years or a fixed term of 10 to 25 years) and 1995 Nev. Stat., ch. 455, § 1, at 1431 (setting forth equal and consecutive terms for use with deadly weapon). In State v. District Court (Pullin), 124 Nev. \_\_\_, 188 P.3d 1079 (2008), this court held 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.” Mayo concedes in his opening brief that this issue was decided adversely to his claim. Because Mayo’s sentence fell within the

permissible range of punishment in effect at the time he committed his crime, his claim lacks merit.

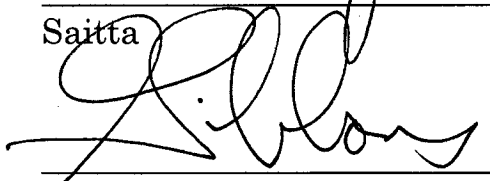
To the extent that Mayo argues that counsel was ineffective, that claim is not properly before the court. Claims of ineffective assistance of counsel are appropriately raised in a timely post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. See Evans v. State, 117 Nev. 609, 622, 28 P.3d 498, 507 (2001). Therefore, we decline to consider this claim.

Second, Mayo argues that his guilty plea was not freely and voluntarily made. Specifically, Mayo contends that he suffers from “significant intellectual deficiencies” and therefore lacked an understanding of the consequences of his plea. However, Mayo’s claim is procedurally barred. Mayo moved to withdraw his plea prior to sentencing based on his “intellectual deficiencies.” The district court denied the motion in an order dated April 6, 2007. An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings. NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n. 2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)). NRAP 4(b)(1) requires that “[i]n a criminal case, the notice of appeal by a defendant shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from.” Mayo failed to file an appeal within 30 days of the denial of his motion to withdraw his guilty plea. Accordingly, we decline to consider this claim.

Having reviewed the record on appeal and for the reasons set forth above, we conclude Mayo is not entitled to relief. Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jennifer Togliatti, District Judge  
Christopher R. Oram  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk