

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM M. ALBERTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51050

FILED

APR 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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On July 6, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 60 to 150 months in the Nevada State Prison. No direct appeal was taken.

On January 11, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On January 30, 2008, the district court denied appellant's motion. This appeal followed.¹

¹The record on appeal for district court case number C226538 was filed in this court in Docket No. 50659. In the interests of judicial economy, we have used the record on appeal filed in Docket No. 50659 to resolve this appeal. We deny appellant's February 28, 2008 motion to consolidate these appeals.

In his motion, appellant contended that the district court violated Apprendi v. New Jersey² when it considered facts in the presentence investigation report that were not presented to a jury. Appellant identified those facts as: (1) a statement regarding substance abuse; (2) statements regarding institutional supervision; and (3) victim information. Appellant further claimed statements made by a prosecutor at sentencing violated Apprendi.

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.³ “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.’”⁴

Our review of the record on appeal reveals that the district court did not err in denying the 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, and appellant failed to demonstrate that the district court was without jurisdiction over this matter.⁵ Moreover, consideration of these facts did not increase the

²530 U.S. 466 (2000).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

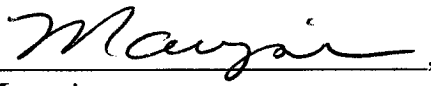
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

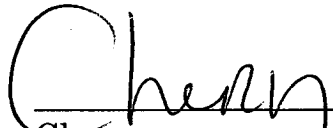
⁵See NRS 207.010(1)(a).


sentence beyond the statutory maximum; thus, Apprendi was not violated by the inclusion of these facts in the presentence investigation report or any alleged consideration of these facts.⁶ Therefore, we affirm the order of the district court.

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.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
William M. Alberter
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶530 U.S. 466.

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