

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC EUGENE BOONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51303

FILED

MAR 12 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Eric Eugene Boone's "motion to correct [an] illegal sentence and motion for resentencing for retroactive application of NRS 193.165." Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 21, 1999, the district court convicted Boone, pursuant to a guilty plea, of one count each of first-degree kidnapping with the use of a deadly weapon (count I) and robbery with the use of a deadly weapon (count II). The district court sentenced Boone to serve a term of life in the Nevada State Prison with the possibility of parole after five years plus an equal and consecutive term for the deadly weapon enhancement for count I, and a term of 60 to 150 months plus an equal and consecutive term for the deadly weapon enhancement for count II. The terms for count II were imposed to run concurrent to count I. This court dismissed Boone's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. Boone v. State, Docket No. 35658 (Order Dismissing Appeal, March 29, 2000).

On July 13, 2000, Boone filed a proper person post-conviction petition for writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent Boone. The district court conducted an evidentiary hearing outside of Boone's presence and, on November 14, 2000, the district court entered an order denying the petition. On appeal, this court reversed the order of the district court and remanded the matter to the district court to conduct a second evidentiary hearing on Boone's petition with Boone present. Boone v. State, Docket No. 36994 (Order of Reversal and Remand, August 22, 2002). On remand, the district court conducted a second evidentiary hearing with Boone present. On October 28, 2002, the district court entered an order denying Boone's petition. This court affirmed the district court's order on appeal. Boone v. State, Docket No. 40562 (Order of Affirmance, January 8, 2004).

On February 11, 2008, Boone filed a proper person "motion to correct [an] illegal sentence and motion for resentencing for retroactive application of NRS 193.165" in the district court. The State opposed the motion. On April 15, 2008, the district court denied the motion. This appeal followed.

In his motion, Boone claimed that the deadly weapon enhancement was improperly applied because it was not presented to a jury, and that he should be resentenced and permitted retroactive application of the 2007 amendments to NRS 193.165. The amendments provide that a defendant who uses a deadly weapon in the commission of a crime shall be punished by an additional consecutive term of imprisonment between one and twenty years. 2007 Nev. Stat., ch. 525, § 13, at 3188. Prior to the 2007 amendments, the deadly weapon

enhancement contained in NRS 193.165 imposed a mandatory consecutive term equal to the term of imprisonment for the underlying crime. 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165).

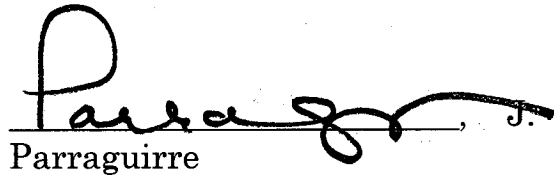
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “A motion 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)).

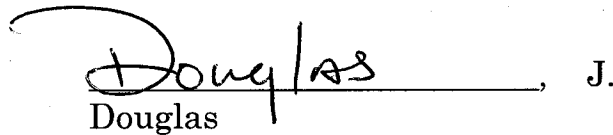
Our review of the record on appeal reveals that Boone’s claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Boone’s sentence was facially legal, and he failed to demonstrate that the district court was not a competent court of jurisdiction. See NRS §§ 200.310(1); 200.320(2)(a); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165); 200.380. Further, the district court properly applied the deadly weapon enhancement because appellant entered a plea to first-degree kidnapping with use of a deadly weapon and robbery with use of a deadly weapon. See 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 of the facts reflected in the jury verdict or admitted by the defendant”) (emphasis omitted)). As a separate and independent ground for affirming the district court’s denial of Boone’s motion, we note that this court has concluded that the amendment to NRS 193.165 does not apply retroactively, but rather applies based on the date

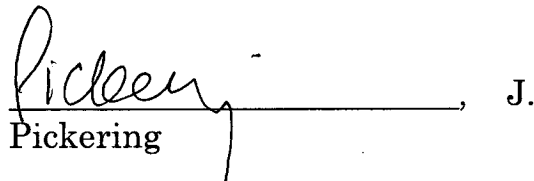
the offense was committed. State v. Dist. Ct. (Pullin), 124 Nev. ___, ___, 188 P.3d 1079, 1084 (2008). Therefore, the district court did not err in denying this motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Boone is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

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