

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKLIN DELANO COMBS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34659

**FILED**

**MAY 17 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

FRANKLIN DELANO COMBS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34660

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's motions to correct an illegal sentence and requests for an evidentiary hearing.

On April 26, 1994, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon in district court case number C118559. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison, to be served concurrently with his sentences in district court case number C118337. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>1</sup>

On May 4, 1994, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon in district court case number C118337. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison.

<sup>1</sup>Combs v. State, Docket No. 27841 (Order Dismissing Appeal, February 22, 1996).

This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>2</sup>

On June 18, 1999, appellant filed proper person motions to correct an illegal sentence and requests for an evidentiary hearing in both district court cases. The State opposed the motions and requests. On July 8, 1999, the district court denied appellant's motion and request in district court case number C118337, and on September 2, 1999, the district court denied appellant's motion and request in district court case number C118559. These appeals followed.

In his motions, appellant contended that his sentences were improperly enhanced because there was no finding by the district court that the knife used in each crime was inherently dangerous. Appellant claimed that his trial counsel was ineffective for failing to contest the deadly weapon enhancements. Therefore, appellant argued that the deadly weapon enhancements must be vacated.

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>3</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>4</sup>

Our review of the record on appeal reveals that the district court properly denied appellant's motions.

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<sup>2</sup>Combs v. State, Docket No. 27840 (Order Dismissing Appeal, March 8, 1996).

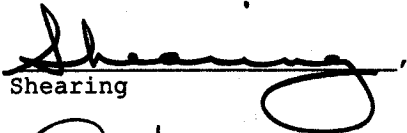
<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

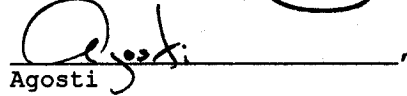
<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

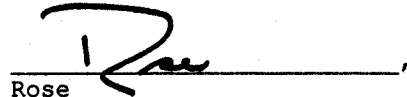
Appellant's sentences were facially legal and there is no indication that the district court was without jurisdiction in either district court case.<sup>5</sup> In challenging the deadly weapon enhancements and the effectiveness of his trial counsel, appellant challenged the validity of the judgments of conviction. Appellant's claims, thus, fell outside the scope of a motion to correct an illegal sentence. Moreover, it was not necessary for the district court to find that the knife used in each crime was inherently dangerous because appellant pleaded guilty to two counts of robbery with the use of a deadly weapon. Therefore, we conclude that the district court did not err in denying appellant's motions and requests for an evidentiary hearing.

Having reviewed the records 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>6</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED.

  
Shearing J.

  
Agosti J.

  
Rose J.

cc: Hon. John S. McGroarty, District Judge  
Attorney General  
Clark County District Attorney  
Franklin Delano Combs  
Clark County Clerk

<sup>5</sup>See 1993 Nev. Stat., ch. 142, § 1, at 253; NRS 193.165.

<sup>6</sup>See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).