

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMION LAMONT JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51888

FILED

NOV 21 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Jennifer Togliatti, Judge.

On March 28, 1996, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. Appellant did not file a direct appeal.

On March 25, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 22, 1997, the district court denied appellant's petition. Appellant did not file an appeal.

On January 11, 2000, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On March 27, 2000, the district court

denied appellant's petition. On appeal, this court affirmed the district court's denial of appellant's petition.¹

On May 2, 2008, appellant filed a motion to correct an illegal sentence. The State opposed the motion. On June 4, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed his conviction was illegal because the deadly weapon enhancement violated double jeopardy and the enhancement was not proven beyond a reasonable doubt to a jury.

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.² "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.'"³

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal.⁴ Further, there is nothing in the record indicating that the district court was without jurisdiction to impose

¹Jackson v State, Docket Nos. 35948 and 35494 (Orders of Affirmance, December 1, 2001).

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

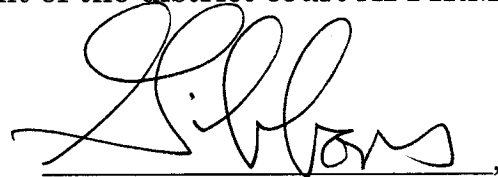
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴See NRS 200.010, NRS 200.030, and NRS 193.165.

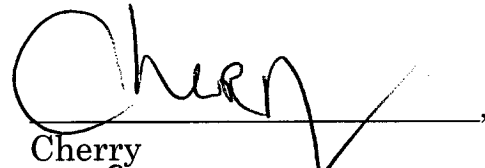
a sentence in this case. The claims that appellant raised fell outside of the scope of claims permissible in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court.

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.⁵ Accordingly, we

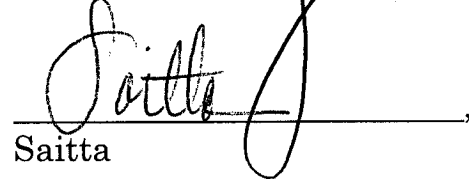
ORDER the judgment of the district court AFFIRMED.⁶

 _____, C.J.

Gibbons

 _____, J.

Cherry

 _____, J.

Saitta

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We 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. Jennifer Togliatti, District Judge
Damion Lamont Jackson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk