

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOLAN EDWARD KLEIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52019

**FILED**

MAR 12 2009

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. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On March 16, 1989, the district court convicted appellant, pursuant to a jury verdict, of two counts of robbery with use of a deadly weapon, one count of sexual assault with use of a deadly weapon, and one count of burglary. The district court sentenced appellant to serve consecutive terms totaling thirty years in the Nevada State Prison for the robbery counts, along with a concurrent five-year term for the burglary count. In addition, the district court imposed two consecutive life terms with the possibility of parole for the sexual assault counts. This court affirmed appellant's conviction on direct appeal. Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989).

Appellant unsuccessfully sought post-conviction relief by way of several post-conviction petitions for a writ of habeas corpus. Klein v. Warden, 118 Nev. 305, 43 P.3d 1029 (2002); Klein v. State, Docket Nos. 27514, 27675 (Order Dismissing Appeals, May 19, 1998); Klein v. State, Docket No. 22597 (Order Dismissing Appeal, February 4, 1994); and Klein

v. State, Docket No. 24174 (Order Dismissing Appeal, November 24, 1993).

On April 10, 2008, appellant filed a motion to correct an illegal sentence. The State opposed the motion. On June 26, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the amendments to NRS 193.165 should apply retroactively to his sentence. At the time of appellant's conviction, NRS 193.165 provided for an equal and consecutive sentence when an offender used a deadly weapon during the commission of a crime. 1981 Nev. Stat., ch. 780, § 1, at 2050. In 2007, the legislature amended NRS 193.165 to provide for an enhancement of 1 to 20 years, to be served consecutively to the term for the primary offense. 2007 Nev. Stat., ch. 525, § 13, at 3188-89.

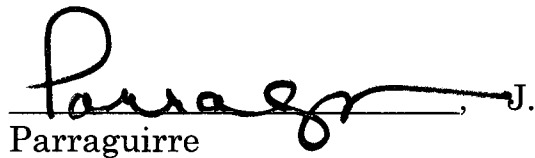
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion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

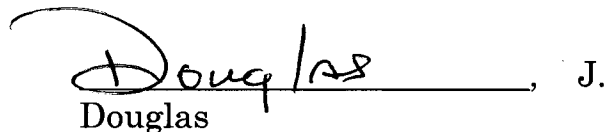
Based upon our review of the record on appeal, we conclude that appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in this matter. See 1967 Nev. Stat., ch. 211, § 59, at 470-71 (NRS 200.380); 1977 Nev. Stat., ch. 598, § 2, at

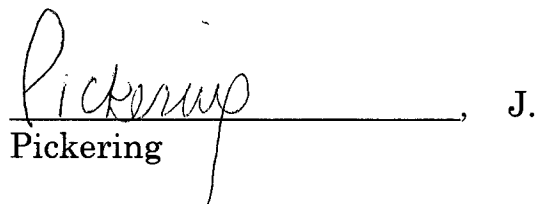
1626 (NRS 200.366); and 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165). As a separate and independent ground to deny relief, we note that this court has concluded that the amendments to NRS 193.165 do not apply retroactively, but rather apply based on the date the offense was committed. State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, 188 P.3d 1079, 1081 (2008). Therefore, we conclude the district court did not err in denying the motion.

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
Parraguirre

  
Douglas

  
Pickering

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<sup>1</sup>We 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. Brent T. Adams, District Judge  
Nolan Edward Klein  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk