IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK E. MCCLINTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52563

FILED

NOV 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

On July 19, 1995, the district court convicted appellant, by a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of two counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two concurrent terms of twenty years in the Nevada State Prison plus equal and consecutive terms for the deadly weapon enhancement. Appellant did not file a direct appeal. Appellant sought post-conviction relief by way of two separate post-conviction petitions for a writ of habeas corpus, a petition for a writ of mandamus,

and a motion to modify his sentence.[1] McClinton v. State, Docket No. 50930 (Order of Affirmance, May 2, 2008); McClinton v. State, Docket No. 30216 (Order Dismissing Appeal, July 12, 1999).

On August 29, 2008, appellant filed a "motion to correct illegal sentence under newly discovered evidence." The State opposed the petition. On October 2, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that his sentence was illegal because the crime of "attempted murder with the use of a deadly weapon" does not exist in the Nevada Revised Statutes. Because the crime of attempted murder with the use of a deadly weapon does not allegedly exist, appellant claimed that the district court was without jurisdiction to convict and sentence him. Appellant also claimed that the attempted murder statute is vague and ambiguous.

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

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[1]Appellant was largely unsuccessful, but did achieve some limited relief in his post-conviction filings in that the district court ordered a restitution requirement stricken from the judgment of conviction, and later ordered that appellant immediately be made eligible for parole consideration.

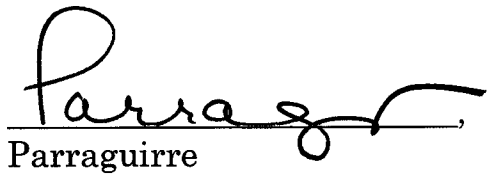
321, 324 (1996). "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

Our review of the record on appeal reveals that appellant's claims lack merit. While no section of the Nevada Revised Statutes was officially titled "attempted murder with the use of a deadly weapon" at the time appellant was convicted, attempted murder with the use of the deadly weapon was nonetheless a valid criminal charge pursuant to NRS 193.330 (attempts); NRS 200.010 (murder); and NRS 193.165 (the deadly weapon enhancement). 1981 Nev. Stat., ch. 64, § 1, at 158-59 (NRS 193.330, formerly NRS 208.070); 1989 Nev. Stat., ch. 282, § 9, at 589 (NRS 200.010); 1991 Nev. Stat., ch. 403, § 6, at 1059 (NRS 193.165). The judgment of conviction specifically listed these statutes and appellant's sentence was within the statutory limits at the time he was convicted. 1981 Nev. Stat., ch. 64, § 1, at 158 (setting forth sentences for attempts); 1991 Nev. Stat., ch. 403, § 6, at 1059 (setting forth the deadly weapon enhancement). Accordingly, appellant's sentence was facially legal. As appellant did not otherwise allege that the district court lacked jurisdiction to sentence him, the district court did not err in denying appellant's motion.

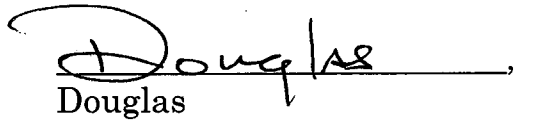
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

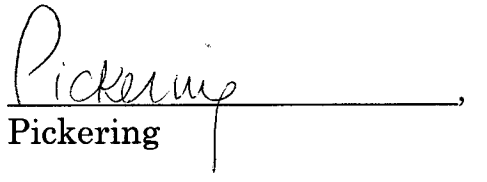
ORDER the judgment of the district court AFFIRMED.[2]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Michael Villani, District Judge
Jack E. McClinton
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[2]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.