

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARD V. DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53374

FILED

SEP 29 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. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

On December 1, 1997, the district court convicted appellant, by a plea entered pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 72 to 180 months in the Nevada State Prison. No direct appeal was taken.

On December 10, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On March 25, 2009, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court failed to adequately canvass appellant about the deadly weapon enhancement. Appellant claimed that he was never informed of the distinction between

possessing a weapon and using a weapon. Appellant further appeared to claim that the issue of use should have been presented to a jury.

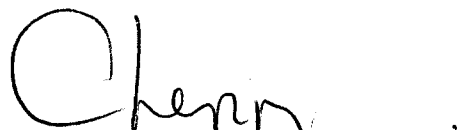
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “A motion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

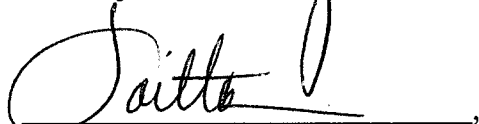
Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant’s claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant’s sentence was facially legal and appellant failed to demonstrate that the district court was not a competent court of jurisdiction. NRS 200.380; 1995 Nev. Stat., ch. 455, § 1, at 1431. Appellant entered a guilty plea to the crime of robbery with the use of a deadly weapon, and thus, the district court properly applied the deadly weapon enhancement in this case. Blakely v. Washington, 542 U.S. 296, 303 (2004) (recognizing 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). Therefore, we affirm the order of the district court.

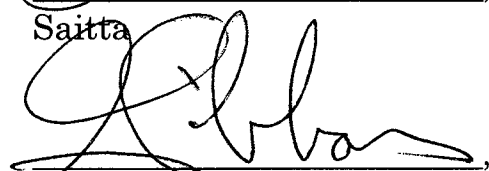
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. 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.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Attorney General Catherine Cortez Masto/Carson City
Bernard V. Davis
Clark County District Attorney David J. Roger
Eighth District Court Clerk