

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX MARQUEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54452

FILED

MAY 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Ingersoll*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.<sup>1</sup> Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, appellant claimed that his sentences for first-degree murder with the use of a deadly weapon and attempted robbery with the use of a deadly weapon were illegal because he did not receive the benefit of the 2007 amendments to NRS 193.165. Appellant's claims were without merit. Appellant's sentences were facially legal, and appellant failed to demonstrate that the district court was not a court of competent jurisdiction. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324

<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

(1996). Notably, this court has concluded that the 2007 amendments to NRS 193.165 do not apply retroactively, and that the penalty for the use of a deadly weapon “should be the one in effect at the time the defendant used a weapon to commit the primary offense.” State v. Dist. Ct. (Pullin), 124 Nev. 564, 572, 188 P.3d 1079, 1084 (2008). Therefore, the district court did not err in denying this claim.

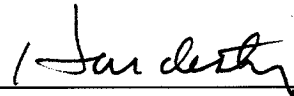
Second, appellant claimed that his sentence for burglary with the use of a deadly weapon was improperly enhanced pursuant to NRS 193.165. This court has consistently concluded that while a sentence for burglary with the use of a deadly weapon may be enhanced pursuant to NRS 205.060(4), “burglary sentences [cannot] be enhanced under NRS 193.165.” Funderburk v. State, 125 Nev. \_\_\_, \_\_\_, 212 P.3d 337, 339 (2009); Carr v. Sheriff, 95 Nev. 688, 690, 601 P.2d 422, 424 (1979). Therefore, we conclude that appellant’s sentence for burglary with the use of a deadly weapon was facially illegal, and reverse the order of the district court with respect to the denial of this claim.<sup>2</sup>

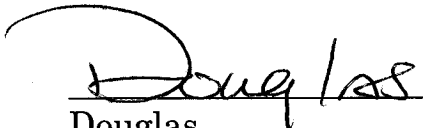
Accordingly, we

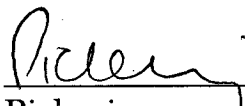
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<sup>2</sup>On remand, we instruct the district court to strike the enhancement to appellant’s sentence for burglary with the use of a deadly weapon pursuant to NRS 193.165.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Brent T. Adams, District Judge  
Alex Marquez  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>3</sup>We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.

This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.