

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARION HENRY BELLOWS,

No. 36000

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 22 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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 and motion for the appointment of counsel.

On June 13, 1990, the district court convicted appellant, pursuant to a jury trial, of one count of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive fifteen-year terms for his offense, in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on April 19, 1994.

On August 3, 1992, appellant filed a proper person petition for post-conviction relief, pursuant to former NRS 177.315 in the district court.² The State opposed the petition. On September 2, 1992, the district court denied appellant's petition. Appellant did not file an appeal from this decision.

On February 27, 1995, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court subsequently appointed counsel to represent appellant for purposes of the post-conviction proceedings, and counsel filed a supplemental petition. On May 29, 1996,

¹Bellows v. State, 110 Nev. 289, 871 P.2d 340 (1994).

²NRS 177.315 was repealed effective January 1, 1993.

the district court denied appellant's petition. This court dismissed appellant's appeal from that order.³

On March 15, 2000, appellant filed a proper person motion to correct an illegal sentence, as well as a motion for the appointment of counsel, in the district court. The state opposed the motions. On March 28, 2000, the district court orally denied appellant's motion for the appointment of counsel, and on April 14, 2000, the district court denied, in a written order, appellant's motion to correct an illegal sentence. This appeal followed.⁴

In his motion, appellant challenged the deadly weapon enhancement. Specifically, appellant contended that the deadly weapon enhancement violated double jeopardy. Appellant argued that his sentence could not be enhanced based upon his use of a deadly weapon because use of a deadly weapon was a necessary element of the crime of murder.⁵

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 that the sentence was imposed in excess of the statutory maximum.⁶ "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.'"⁷

Our review of the record on appeal reveals that appellant is not entitled to relief. Appellant's challenge to the deadly weapon enhancement fell outside the narrow scope of claims cognizable in a

³Bellows v. State, Docket No. 28798 (Order Dismissing Appeal, July 21, 1998).

⁴To the extent appellant seeks to appeal from the denial of his motion for the appointment of counsel, we conclude that the district did not abuse its discretion in denying the motion.

⁵See NRS 193.165(3) (providing that the deadly weapon enhancement does "not apply where the use of a firearm . . . is a necessary element of such crime").

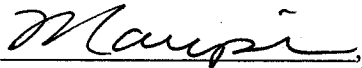
⁶Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

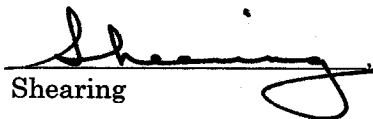
⁷Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

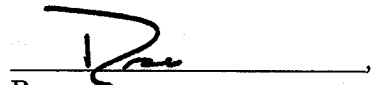
motion to correct an illegal sentence because appellant challenged the validity of his conviction for use of a deadly weapon. Appellant's sentence was within statutory limits, and there is nothing in the record to suggest that the district court was without jurisdiction to impose the sentence.⁸ Furthermore, this court already considered this argument in appellant's proper person post-conviction petition for a writ of habeas corpus, and refused to grant him relief based on this issue.⁹ That determination is the law of the case and will not be disturbed.¹⁰ Thus, appellant's contention lacks merit.

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Maupin

 J.
Shearing

 J.
Rose

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Marion Henry Bellows
Clark County Clerk

⁸See NRS 200.030; NRS 193.165.

⁹Bellows v. State, Docket No. 28798 (Order Dismissing Appeal, July 21, 1998).

¹⁰See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).