

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAY ANTHONY TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36042

FILED

NOV 21 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

RAY ANTHONY TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36746

ORDER OF AFFIRMANCE

Docket No. 36042 is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Docket No. 36746 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition. See NRAP 3(b).

On June 28, 1983, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant did not file a direct appeal.

On March 9, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion, and appellant filed a reply. On April 17, 2000, the district court denied appellant's motion. Appellant's appeal is docketed in this court in Docket No. 36042.

On June 9, 2000, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that the petition was procedurally time barred. Further, the State specifically

00-20408
20410

pleaded laches. Appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 6, 2000, the district court denied appellant's petition. Appellant's appeal is docketed in this court in Docket No. 36746.

Docket No. 36042

In his motion, appellant challenged the deadly weapon enhancement. Specifically, appellant argued that the deadly weapon enhancement violated double jeopardy, equal protection and due process because the use of a deadly weapon is an element of first degree murder. 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. See 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").

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. *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (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. at 708, 918 P.2d at 324 (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 appellant's motion. Appellant's challenge to the deadly weapon enhancement fell outside the narrow scope of claims cognizable in a 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. See NRS 200.030; NRS 193.165. Appellant admitted his use of a deadly weapon during the commission of his crime when he entered a guilty plea to first degree murder with the use a deadly weapon. Further, contrary to appellant's argument, the use of a deadly weapon is not a necessary element of the crime of first degree murder. Therefore, we conclude that the district court did not err in denying appellant's motion.

Docket No. 36746

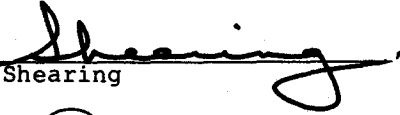
Appellant's petition was filed approximately seventeen years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id. Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

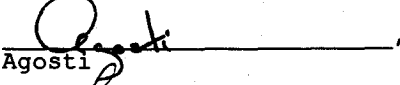
In an attempt to excuse his procedural defects, appellant argued that he had good cause to file an untimely petition due to "substantial [sic] violations of 6th Amendment rights to the U.S. Constitution." Appellant argued that his counsel was ineffective in allowing appellant to plead guilty because questions of appellant's competency had arisen in preparation for trial, because appellant was not charged by an indictment with first degree murder but rather was charged simply with murder with the use of a deadly weapon, and because his counsel failed to advise him of his right to a direct appeal. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome the presumption of prejudice to the State occasioned by appellant's seventeen-year delay. See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

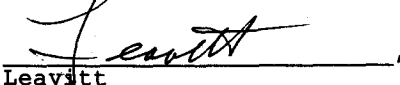
Conclusion

Having reviewed the records 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), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the orders of the district court.

It is so ORDERED.


Shearing J.


Agosti J.


Leavitt J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Ray Anthony Turner
Clark County Clerk