

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JAMES BERRY,

No. 36054

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 13 2001

ANETTE M. BLOOM
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 appellant's motion to correct an illegal sentence.

On January 21, 1987, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive life terms in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 12, 1988.

On August 4, 1993, appellant filed a proper person petition for a writ of coram nobis. The district court denied the petition on November 23, 1993. This court subsequently dismissed the appeal from the district court order.²

On March 19, 1997, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 16, 1997, the district court denied the motion. This court subsequently dismissed the appeal from the district court order.³

On March 30, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Berry v. State, Docket No. 18098 (Order Dismissing Appeal, June 23, 1988).

²Berry v. State, Docket No. 25244 (Order Dismissing Appeal, March 31, 1994).

³Berry v. State, Docket No. 30343 (Order Dismissing Appeal, December 24, 1997).

01-20943

motion. On April 19, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court judge improperly enhanced his sentence because NRS 175.552 only allows the jury to decide a defendant's sentence for a conviction of first degree murder.⁴

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.⁵ "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.'"⁶ Moreover, a motion to correct an illegal sentence cannot be used to challenge the validity of a sentence based on alleged errors occurring at trial or sentencing.⁷

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction to sentence appellant. Appellant's claim that his sentence should not have been enhanced by the district court is outside of the narrow scope of claims that can be raised in a motion to correct an illegal sentence because he challenged an alleged error that occurred at sentencing. Appellant was convicted by a jury of first degree murder with the use of a deadly weapon. The jury determined that appellant should be sentenced to serve a term of life without the possibility of parole. Thus, the district court properly sentenced appellant to a term of life without the possibility of parole plus an equal and consecutive term of life without the

⁴See NRS 175.552.

⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

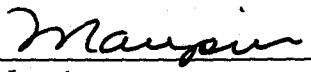
⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

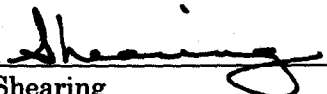
⁷See Edwards, 112 Nev. at 708, 918 P.2d at 324.

possibility of parole for the use of a deadly weapon pursuant to NRS 193.165.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, C.J.
Maupin


_____, J.
Shearing


_____, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
William James Berry
Clark County Clerk

⁸See NRS 200.030; NRS 193.165; see also Crew v. State, 100 Nev. 38, 47, 675 P.2d 986, 989 (1984).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁰We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.