

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES L. BUCK,

No. 36526

Appellant

vs.

THE STATE OF NEVADA,

Respondent

FILED

DEC 18 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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.

On March 18, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, and one count of burglary. The district court sentenced appellant to serve a term of thirty-five (35) to one hundred (100) months of imprisonment for robbery in the Nevada State Prison with an equal, consecutive term for the use of a deadly weapon, and a concurrent term of twenty-two (22) to ninety-six (96) months for burglary. This court dismissed appellant's appeal from his judgment of conviction.¹

On July 3, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a reply. On July 19, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that his conviction for the deadly weapon enhancement is illegal because a broken beer bottle is not a deadly weapon as defined by NRS 193.165.

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.² "A motion to correct an illegal sentence

¹Buck v. State, Docket No. 32106 (Order Dismissing Appeal, June 26, 1998).

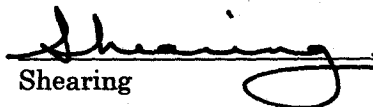
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

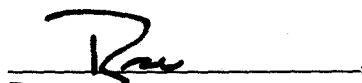
'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'³

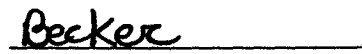
Our review of the record on appeal reveals that appellant's claim is outside the scope of claims cognizable in a motion to correct an illegal sentence because it challenged the validity of his conviction. Specifically, appellant in essence challenged the jury's finding that he had used a deadly weapon in the commission of the robbery. This challenge is not cognizable in a motion to correct an illegal sentence. Further, 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.⁴ Accordingly, we conclude that the district court properly denied appellant's motion.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. J. Michael Memeo, District Judge
Attorney General/Carson City
Elko County District Attorney
James L. Buck
Elko County Clerk

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴See NRS 200.380; NRS 193.165.

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.