

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN KILIOI MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37172

**FILED**

JUL 30 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence.

On March 17, 1994, 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 terms of life in the Nevada State Prison without the possibility of parole. This court reversed the conviction and remanded for a new trial because of the district court's refusal to give appellant's proffered jury instructions on temporary insanity coupled with comments made by the State and the district court regarding temporary insanity.<sup>1</sup> Appellant subsequently entered a guilty plea to the crime of first degree murder with the use of a deadly weapon and stipulated that he would receive two consecutive terms of life with the possibility of parole. The district court sentenced appellant accordingly and entered a judgment of conviction on December 10, 1996. No direct appeal was taken from the 1996 judgment of conviction.

On November 6, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a response. On November 29, 2000, the district

---

<sup>1</sup>Miller v. State, 112 Nev. 168, 911 P.2d 1183 (1996).

court entered an order summarily denying appellant's motion.<sup>2</sup> This appeal followed.

In his motion, appellant contended that the deadly weapon enhancement was illegal. Appellant claimed that the knife that he had used was not an inherently dangerous weapon. Appellant further claimed that the district court failed to make a finding that the knife was an inherently dangerous weapon and that NRS 193.165 was unconstitutionally vague because it did not adequately define the weapons that would qualify as deadly weapons.

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 the sentence was imposed in excess of the statutory maximum.<sup>3</sup> "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.'"<sup>4</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal and there is no indication that the district court was without jurisdiction to sentence

---

<sup>2</sup>On February 2, 2001, the district court entered a second order denying appellant's motion.

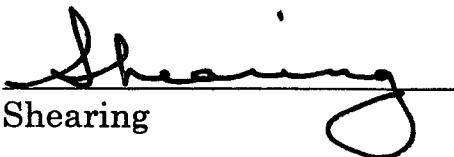
<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


<sup>4</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

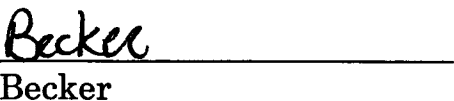
appellant.<sup>5</sup> Because appellant entered a guilty plea to the crime of first degree murder with the use of a deadly weapon, appellant's challenge to the deadly weapon enhancement was an improper attempt to challenge the validity of his guilty plea in a motion to correct an illegal sentence. Therefore, 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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
John Kilioi Miller  
Clark County Clerk

---

<sup>5</sup>1989 Nev. Stat., ch. 631, § 1, at 1451 (providing for a term of life with the possibility of parole for the offense of first degree murder); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.