

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO DOMINGUEZ,

No. 37207

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. [Signature]*
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 October 21, 1994, the district court convicted appellant, after a jury trial, of one count of conspiracy to commit robbery (Count 1), one count of attempted robbery with the use of a deadly weapon (Count 2), and one count of attempted murder with the use of a deadly weapon (Count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for Count 1, a term of four years to be served concurrently with a term in another district court case; for Count 2, two consecutive terms of six years to be served concurrently with Count 1; for Count 3, two consecutive terms of sixteen years to be served consecutively with Count 2. This court dismissed appellant's direct appeal.¹ The remittitur issued on January 23, 1996.

On January 10, 1997, 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 appointed counsel to represent appellant in the post-conviction proceedings, and counsel filed a reply. On May 20, 1997, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

¹Dominguez v. State, Docket No. 26523 (Order Dismissing Appeal, January 4, 1996).

²Dominguez v. State, Docket No. 30594 (Order Dismissing Appeal, October 6, 1997).

On January 22, 1999, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a reply. On May 17, 1999, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.³

On November 1, 2000, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 27, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the criminal information was defective. Specifically, he argued that the criminal information failed to state that a finding that defendant had used a deadly weapon in commission of the offense of attempted murder would result in an additional penalty. Appellant believed that this omission prevented the jury from determining that he was guilty of every element of the offense beyond a reasonable doubt. Appellant requested that the deadly weapon enhancement for the attempted murder be vacated.

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.⁴ A motion to correct an illegal sentence presupposes a valid conviction and "cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing."⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. There is no indication that the district court was without jurisdiction. Appellant's sentences were facially legal. Moreover, even assuming appellant's claim fell within the proper scope, appellant's claim lacked merit. The criminal information clearly alleged that

³Dominguez v. State, Docket No. 34205 (Order Dismissing Appeal, May 29, 2001).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


⁵Id.

appellant committed the attempted murder with the use of a deadly weapon. The deadly weapon enhancement statute, NRS 193.165, is referenced on the face of the criminal information. NRS 173.075 does not require that the criminal information list the potential penalties.⁶ The jury was instructed on the elements of attempted murder and the definition of a deadly weapon. The jury was further instructed that if the jury found the defendant guilty of attempted murder, it must also determine if a deadly weapon was used in the commission of this offense. Thus, we conclude that the district court properly denied the 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Roberto Dominguez
Clark County Clerk

⁶NRS 173.075(1) provides, "[t]he indictment or the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged. . . . It need not contain a formal commencement, a formal conclusion or any other matter not necessary to the statement."

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).