

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH TORRES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78589-COA

FILED

FEB 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Torres, Jr. appeals from a district court order denying a motion to correct an illegal sentence filed on February 4, 2019. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Torres argues the district court erred by denying his motion because the court's determination is unreasonable and the court's finding that he was not convicted of or sentenced for the non-existent crime of using a deadly weapon is belied by the record.

A motion to correct an illegal sentence may address only 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. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

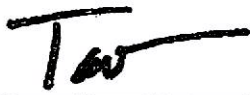
Below, Torres argued that the use of a deadly weapon is not a crime and, therefore, the sentencing court lacked jurisdiction to impose a separate sentence for the use of a deadly weapon. Torres is correct that the use of a deadly weapon is not itself a crime. However, as the district court found, the underlying sentence is enhanced pursuant to NRS 193.165 when a deadly weapon is found to have been used in the commission of the crime.

20-07819

The record reveals that the jury found Torres was guilty of second-degree murder and he used a deadly weapon during the commission of the crime. Therefore, the sentencing court did not exceed its jurisdiction or impose a sentence in excess of the statutory maximum by imposing an additional penalty for the use of a deadly weapon that was equal and consecutive to the sentence imposed for Torres' primary offense. *See* 1995 Nev. Stat., ch. 455, § 1, at 1431 (former NRS 193.165). Accordingly, we conclude the district court did not err by denying Torres' motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerome M. Polaha, District Judge
Joseph Torres, Jr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk