

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIM MICHAEL ANDERSON,

No. 37398

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

OCT 31 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [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 January 10, 1995, the district court convicted appellant, pursuant to a jury trial, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 15 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on January 8, 1997.

On April 4, 1995, 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 and conducted an evidentiary hearing. On May 7, 1996, the district court denied the petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

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<sup>1</sup>Anderson v. State, Docket No. 26875 (Order Dismissing Appeal, December 20, 1996).

<sup>2</sup>Anderson v. State, Docket No. 28872 (Order Dismissing Appeal, June 22, 1998).

On December 5, 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 January 24, 2001, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that application of the deadly weapon enhancement statute to his conviction for second degree murder violated his double jeopardy rights because the use of a deadly weapon is a necessary element of the crime of second degree murder. Appellant also argued that the deadly weapon enhancement statute is unconstitutional as applied to him.

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.<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 challenge to the deadly weapon enhancement fell outside the narrow scope of claims cognizable in a motion to correct an illegal sentence. Appellant's sentence was within the statutory limits, and there is nothing in the record to suggest that the district court was without jurisdiction to impose the

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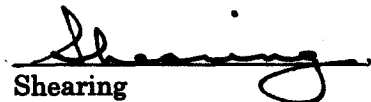
<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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

sentence.<sup>5</sup> Further, the use of a deadly weapon is not a necessary element of the crime of second degree murder.<sup>6</sup>

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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Lyon County District Attorney  
Tim Michael Anderson  
Lyon County Clerk

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<sup>5</sup>See NRS 200.030.

<sup>6</sup>See NRS 200.030; NRS 193.165; Williams v. State, 99 Nev. 797, 798, 671 P.2d 635, 636 (1983) (holding that use of a deadly weapon is not a necessary element of murder); Woofter v. O'Donnel, 91 Nev. 756, 542 P.2d 1396 (1975) (rejecting double jeopardy challenge to the deadly weapon enhancement).

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

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.