

IN THE SUPREME COURT OF THE STATE OF NEVADA

COURTNEY L. LOWE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38292

FILED

MAY 01 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Courtney L. Lowe's motion to correct and vacate an illegal sentence.

On September 7, 1993, Lowe was convicted, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. The district court sentenced Lowe to serve two consecutive prison terms of 8 years and pay \$1,500.00 in restitution; the sentence was ordered to run concurrently with the sentence in district court case no. C109626B. Lowe did not pursue a direct appeal.

On August 13, 1999, Lowe filed a proper person motion to vacate or modify his sentence in the district court. In his motion, Lowe contended that the presentence report prepared by the Department of Parole and Probation contained "factual inaccuracies, unsubstantiated allegations, and a negative tone beyond what was necessary." Lowe also conceded that the district court was informed about the inaccuracies and noted Lowe's objections. The State opposed the motion, and on October 4,

1999, the district court denied Lowe's motion.¹ Lowe's proper person motion for reconsideration was also denied by the district court.

On July 3, 2001, Lowe filed a proper person motion to correct and vacate an illegal sentence in the district court. The State opposed the motion. On July 20, 2001, the district court denied Lowe's motion to correct, and granted his motion for the appointment of counsel to represent him on appeal. This appeal followed.

Lowe contends that the district court erred in imposing the deadly weapon enhancement pursuant to NRS 193.165. Lowe argues that: (1) his guilty plea was not knowingly and intelligently entered because the information was deficient and did not provide sufficient notice of the sentencing consequences of the deadly weapon enhancement; and (2) this court should reconsider its holding that the enhancement statute does not constitute a separate offense but rather only imposes an additional penalty for the primary offense.² We conclude that Lowe's contentions are without merit.

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

¹We note that the department recommended a much stiffer sentence than that imposed by the district court - two consecutive terms of life in prison with the possibility of parole.

²See generally Raby v. State, 92 Nev. 30, 544 P.2d 895 (1976); Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975).

the statutory maximum.³ “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.”⁴ “[S]uch a motion 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 A motion to correct an illegal sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁶

Based upon our review of the record on appeal, we conclude that the district court did not err in denying Lowe’s motion. Lowe’s sentence was facially legal, and there is no indication that the district court was without jurisdiction.⁷ We also note that both the criminal information and guilty plea memorandum clearly cite to the deadly weapon sentencing enhancement statute. And finally, we also conclude that the arguments raised by Lowe in his motion fall outside the scope of issues permissible in a motion to correct an illegal sentence.

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

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

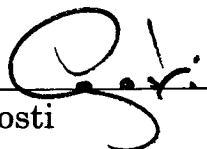
⁵Id.

⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2.

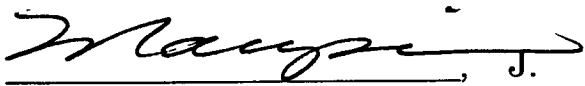
⁷See NRS 193.165; NRS 200.010; NRS 200.030(2); see also 1989 Nev. Stat., ch. 408, § 1(5), at 866. .

Having considered Lowe's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Nancy M. Saitta, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk