

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID A. HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39280

FILED

OCT 24 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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 August 24, 1993, the district court convicted appellant, pursuant to a guilty plea, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to a term in the Nevada State Prison of life with the possibility of parole, plus an equal and consecutive term for the use of a deadly weapon. This court dismissed appellant's direct appeal.¹

On January 25, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On February 12, 2002, the district court denied appellant's motion. This appeal followed.

A motion to correct an illegal sentence is limited in scope and may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence, or the sentence was

¹Hernandez v. State, Docket No. 26964 (Order Dismissing Appeal, May 26, 1995).

imposed in excess of the statutory maximum.² "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.'"³

In his motion, appellant contended that his sentence was illegal because he never entered a guilty plea and accordingly, the district court lacked jurisdiction to sentence him. Our review of the record on appeal reveals no indication that the district court was without jurisdiction or that appellant's sentence was not facially legal.⁴

Appellant's challenge is outside the scope of permissible claims. Although appellant attempted to frame his claim as a jurisdictional issue, what he essentially asserted is that his plea was invalid.

Moreover, as a separate and independent ground to deny relief, appellant's guilty plea was valid. A guilty plea is presumptively valid, and the appellant bears the burden of establishing it was not.⁵ Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a guilty plea.⁶ Appellant signed a guilty plea memorandum which stated that he admitted that facts in the amended

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

³Id., (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁴Appellant pleaded guilty pursuant to NRS 200.010, NRS 200.030 and NRS 193.165.

⁵Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁶Id.

information charging him with second degree murder with the use of a deadly weapon, and that in exchange for his plea the State agreed not to pursue the original charges of conspiracy to commit murder and attempted murder with the use of a deadly weapon. Despite appellant's assertion to the contrary, the district court did in fact conduct a plea canvass. During the plea canvass appellant stated that he had discussed the guilty plea memorandum with his attorney, understood that he would probably receive the maximum penalty and made a factual statement that he shot at the victim. The following exchange took place:

THE COURT: All right. What did you do on or about the 29th day of July of 1992 that causes you to plead guilty here today to second degree murder with the use of a deadly weapon?

THE DEFENDANT: I went to a trailer park and sat at the trailer park with a shirt over my head and shot at the trailer, and a lady was in front of it, and the other guy shot, too.

THE COURT: Did you fire the weapon?

THE DEFENDANT: Yes, sir.

THE COURT: And you fired at [the victim]?

THE DEFENDANT: I shot at the trailer.

THE COURT: Pardon me?


THE DEFENDANT: Yes, sir.


Apparently, appellant's argument is based on the premise that this colloquy proves that he did not plead guilty. This argument is without merit. Therefore, based on our review of the entire record and the totality of the circumstances, we conclude that the district court did not abuse its

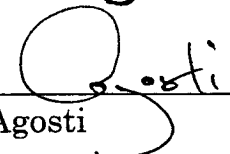
discretion in finding that appellant's plea was knowingly and voluntarily entered.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
David A. Hernandez
Clark County Clerk

⁷See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d at 701. 706 (1996); Bryant, 102 Nev. at 272, 721 P.2d at 368.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.