

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE WADE BLAIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39634

FILED

JAN 15 2003

ORDER OF AFFIRMANCE

JANETTE H. BROWN
CLERK OF SUPREME COURT
BY *J. Richards*
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 June 15, 1990, the district court convicted appellant, pursuant to a jury verdict, of burglary, two counts of sexual assault with the use of a deadly weapon, and attempted sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve a term of five years for the burglary count, two terms of life with the possibility of parole with equal and consecutive terms for the use of a deadly weapon for the sexual assault counts, and a term of ten years with an equal and consecutive term for the use of a deadly weapon for the attempted sexual assault count. The district court ordered that all terms be served concurrently. In addition, the district court ordered that the sentences be served consecutive to appellant's sentence in district court case number CR90-631, and concurrent to appellant's sentence in district court case number CR90-632.¹ This court dismissed appellant's direct appeal.²

¹An amended judgment of conviction was entered on July 11, 1990, to correct a clerical error in the original judgment of conviction.

²Blair v. State, Docket No. 21382 (Order Dismissing Appeal, June 27, 1991).

On March 13, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. On April 24, 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 imposed in excess of 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

In his motion, appellant claimed that his sentence was illegal due to the fact that each of the four sentences he received were enhanced pursuant to NRS 193.165(1). NRS 193.165(1) requires the imposition of an additional, equal and consecutive term when a deadly weapon is used in the commission of an offense. Appellant argued that therefore, the district court was required to sentence him to serve all four terms consecutively rather than concurrently. But, according to appellant, the district court cannot at this time "correct" itself by ordering the sentences to be served consecutively because appellant had an expectation of finality at the time of sentencing. Thus, appellant reasoned, his sentence is illegal on its face and must be vacated. This claim is without merit. NRS 193.165 does not prohibit the district court from ordering the sentences for different offenses to be served concurrently. Therefore, appellant's claim

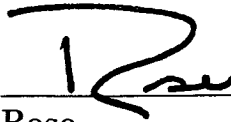
³See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

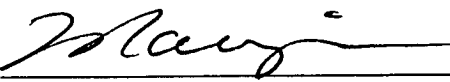
⁴Id., (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


that his sentence is illegal on its face is without merit, and the district court did not err in denying 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Washoe County District Attorney
Bruce Wade Blair
Washoe District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).