

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JOHN WHISENHUNT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39637

FILED

MAR 21 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence.

On June 21, 1985, the district court convicted appellant Kevin John Whisenhunt, pursuant to a jury verdict, of burglary, robbery with the use of a deadly weapon, first degree kidnapping with the use of a deadly weapon, ex-felon in possession of a firearm, and possession of a short-barreled shotgun. The district court sentenced Whisenhunt to serve consecutive terms totaling sixty-four years in the Nevada State Prison. No direct appeal was taken.

On March 14, 2002, Whisenhunt filed a motion to correct an illegal sentence in the district court. The State opposed the motion and Whisenhunt filed a reply. On April 30, 2002, the district court denied Whisenhunt's motion. This appeal followed.

In his motion, Whisenhunt challenged the deadly weapon enhancements. Whisenhunt, relying on Apprendi v. New Jersey, 530 U.S. 227 (1999), argued that his sentences were illegal because the facts

supporting the deadly weapons enhancements were not submitted to the jury and proved beyond a reasonable doubt.¹

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.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

Our review of the record on appeal reveals that the district court did not err in denying Whisenhunt's motion. Whisenhunt's challenges to the deadly weapon enhancements fall outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Whisenhunt's sentences were facially legal and there is no indication in the record that the district court was without jurisdiction to impose the sentences. Moreover, as a separate and independent ground to deny relief, Whisenhunt's claim lacks merit. The deadly weapon enhancement is reflected in the information by which Whisenhunt was charged, and the jury was instructed on robbery, kidnapping, and the use of a deadly weapon during the commission of a crime. In returning verdicts of guilty of robbery and kidnapping with the use of a deadly weapon, the jury found

¹See Apprendi, 530 U.S. at 490.

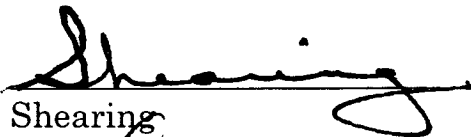
²See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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


beyond a reasonable doubt that Whisenhunt used a deadly weapon in the commission of those crimes.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Whisenhunt is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Janet J. Berry, District Judge
Kevin John Whisenhunt
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).