

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID NATHANIEL DUNKLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41946

FILED

MAY 20 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
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 David Dunkle's motion to correct an illegal sentence.

On December 2, 1999, the district court convicted Dunkle, pursuant to a guilty plea, of first-degree murder with the use of a deadly weapon and robbery with the use of a deadly weapon. The district court sentenced Dunkle to serve two terms of life in the Nevada State Prison with the possibility of parole after twenty years for the murder conviction, and two terms of five to fifteen years for the robbery conviction. All sentences were imposed to run consecutively. Dunkle did not file a direct appeal.

On July 8, 2003, Dunkle filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. Dunkle filed a reply. On August 15, 2003, the district court denied Dunkle's motion. This appeal followed.

In his motion, Dunkle contended that his sentence was illegal because the district court erroneously enhanced his sentence for the use of

a deadly weapon. Specifically, Dunkle claimed that the district court could not impose the deadly weapon sentencing enhancements because there was no prior finding of the necessary facts by a jury, and the use of a deadly weapon was a necessary element of the crimes charged.

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 the statutory maximum.¹ "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.'"²

Dunkle's sentence was within the range prescribed by statute for the crimes of which he was convicted.³ Further, there is no indication that the district court was without jurisdiction. To the extent that Dunkle is contesting the deadly weapon enhancement aspect of his conviction, we conclude that this is outside the scope of a motion to correct an illegal sentence because it is a challenge to the validity of his guilty plea. As such, the district court did not err in denying Dunkle's motion.

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

³See NRS 193.165(1); 200.030(4)(b); 200.380(2).

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

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
David Nathaniel Dunkle
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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