

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH SILVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42187

FILED

JUL 22 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's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On May 16, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of first degree murder with the use of a deadly weapon, and one count of burglary. The district court sentenced appellant to serve the following terms in the Nevada State Prison: two consecutive terms of ten years for the robbery count; two consecutive terms of life with the possibility of parole for the murder count, to run concurrently with the robbery count; and a term of eight years for the burglary count, to run concurrently with the terms for the counts of robbery and murder. This court affirmed appellant's judgment of conviction on direct appeal.¹

On September 10, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. The State

¹Silva v. State, Docket No. 36306 (Order of Affirmance, June 5, 2002).

opposed the motion. On September 30, 2003, the district court denied the motion. This appeal followed.

In his motion, appellant challenged the deadly weapon enhancements to his robbery and murder sentences. Specifically, appellant claimed that the deadly weapon enhancement statute, NRS 193.165, was unconstitutional because of alleged defects in its enactment. Thus, appellant claimed that the district court lacked jurisdiction to impose sentences for the deadly weapon enhancements and those sentences were null and void.

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.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 appellant's motion. Appellant's challenge to the constitutionality of 193.165 was patently without merit. The validity of NRS 193.165 was not affected by any irregularities that allegedly occurred in the passage of Assembly Bill 234.⁴ Moreover, we have

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

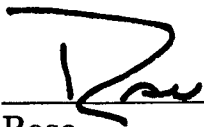
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

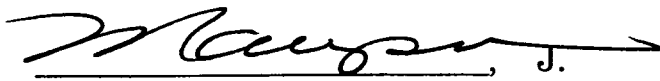
⁴See State v. Beck, 25 Nev. 68, 79-81, 56 P. 1008, 1009-10 (1899) (holding that an enrolled bill, signed by the proper officers of the
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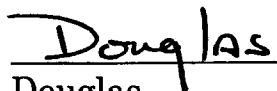
previously held that NRS 193.165 is constitutional.⁵ Therefore, we affirm the order of the district court denying appellant's motion.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John S. McGroarty, District Judge
Michael Joseph Silva
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

... continued

legislature, approved by the governor, and filed with the secretary of state, is conclusively presumed to have been regularly enacted).

⁵See Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).