

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD W. COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42507

FILED

JUN 03 2004

ANGIE L. WILSON
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On October 25, 2000, the district court convicted Collins, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Collins to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years, plus an equal and consecutive term for the use of a deadly weapon. On appeal, this court affirmed his judgment of conviction and sentence.¹ The remittitur issued on June 4, 2002.

On December 5, 2002, Collins filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Collins or to conduct an evidentiary hearing. On

¹Collins v. State, Docket No. 37061 (Order of Affirmance, May 10, 2002).

April 1, 2003, the district court denied Collins' petition. This court affirmed the order of the district court.²

On November 5, 2003, Collins filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On November 25, 2003, the district court denied Collins' motion. This appeal followed.

In his motion, Collins contended that his deadly weapon enhancement was wrongfully imposed because the use of a deadly weapon was a necessary element of the crime of murder.³

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.⁴ "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.'"⁵

Collins' claim is outside the scope of a motion to correct an illegal sentence because it is a challenge to his judgment of conviction. Moreover, as a separate and independent ground to deny relief, Collins' claim is entirely without merit. The use of a deadly weapon is not a

²Collins v. State, Docket No. 41194 (Order of Affirmance, April 14, 2004).

³See NRS 193.165(3).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

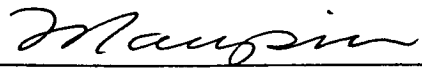
⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

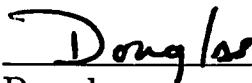
necessary element of the crime of first-degree murder.⁶ As there is nothing in the record to suggest that the district court was without jurisdiction to impose Collins' sentence, and his sentence is within the range prescribed by the applicable statutes,⁷ the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Collins is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Ronald W. Collins
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶Crew v. State, 100 Nev. 38, 47, 675 P.2d 986, 991 (1984); see also NRS 200.010; 200.030.

⁷See NRS 193.165; 200.030.

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