

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WAYNE ROBINSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47281

**FILED**

AUG 22 2006

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 a motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge.

On May 2, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with substantial bodily harm, victim over the age of 60. The district court sentenced appellant to serve two consecutive terms of 2 to 5 years in the Nevada State Prison. No direct appeal was taken.

On March 27, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On April 28, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the district court improperly applied the older victim enhancement because the facts supporting the enhancement were not presented to a jury nor proven beyond a reasonable doubt. Appellant further claimed that NRS 193.167 (older victim enhancement) violated double jeopardy.

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.<sup>1</sup> "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.'"<sup>2</sup>

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and there is no indication that the district court was not a court of competent jurisdiction.<sup>3</sup> Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Appellant pleaded guilty to battery causing substantial bodily harm, victim over the age of 60, and appellant admitted to the facts supporting the older victim enhancement. Thus, the district court was permitted to impose the older victim

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

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

<sup>3</sup>See NRS 200.481(2)(b); NRS 193.130(2)(c); NRS 193.167.

enhancement.<sup>4</sup> Further, the older victim enhancement does not violate double jeopardy.<sup>5</sup> Therefore, we affirm the order of the district court.

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.<sup>6</sup> Accordingly, we

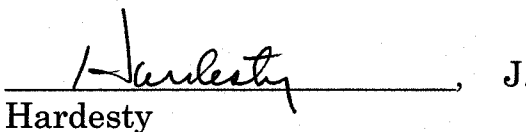
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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<sup>4</sup>See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

<sup>5</sup>See 193.167(3) (providing that this statute did not create a separate offense but provided for an additional penalty for the primary offense upon the finding of the prescribed fact); Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975) (rejecting a double jeopardy claim to NRS 193.165 and recognizing that there is no double jeopardy violation where the enhancement does not create a separate offense but provides for an additional penalty upon the finding of the prescribed fact).

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

cc: Eighth Judicial District Court Dept. 9, District Judge  
Michael Wayne Robinson  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk