

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN A. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48976

FILED

JUL 27 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to vacate an illegal sentence. Eighth Judicial District Court, Clark County; Elizabeth Halverson and David Barker, Judges.¹

On March 26, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of deadly weapon. The district court sentenced appellant to two consecutive terms of 60 to 180 months in the Nevada Department of Corrections and ordered appellant to pay \$4,000.00 in restitution. Appellant did not file a direct appeal.

On March 8, 2004, appellant filed a post conviction petition for writ of habeas corpus. The State opposed the petition, and appellant subsequently filed a motion to withdraw the petition for writ of habeas corpus, which the district court granted.

¹This case was reassigned to the Honorable Judge David Barker on April 29, 2007.

On December 15, 2006, appellant filed a proper person motion to vacate an illegal sentence in the district court. The State opposed the motion. On January 25, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant first contended that his sentence was illegal as he was never informed that he had a right to a jury trial on the charge of robbery with the use of a deadly weapon. Appellant argued that the district court's failure to apprise him of this right violated his Sixth amendment right to a jury trial because the facts supporting his enhanced sentence for the use of a deadly weapon were never admitted by him, nor were they found by a jury.

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 the 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 reveals that the district court did not err in denying appellant's motion to vacate an illegal sentence. Appellant's claims fell outside the scope of a motion to correct or vacate an illegal sentence. Appellant's sentence was facially legal, and appellant

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

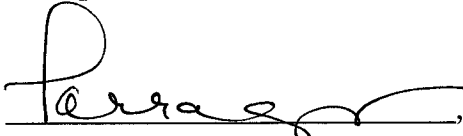
³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


failed to demonstrate that the district court was without jurisdiction in the instant case.⁴ Appellant may not attack the validity of his guilty plea by way of a motion to vacate an illegal sentence. Therefore, we affirm the order of the district court denying the 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Parraguirre


_____, J.
Hardesty

cc: Hon. David Barker, District Judge
Bryan A. Williams
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See NRS 200.380(2) (providing that robbery is a category B felony and punishable by a minimum term of not less than 2 years and a maximum term of not more than 15 years); NRS 193.165 (providing for an equal and consecutive term for the use of a deadly weapon during the commission of a crime).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).