

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON JAMAR OLDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49628

FILED

OCT 15 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [Signature] DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On December 7, 2004, the district court convicted appellant, pursuant to a guilty verdict, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve a term of 30 to 84 months, plus an equal and consecutive term for the use of a deadly weapon, in the Nevada State Prison. Appellant did not file a direct appeal.

On April 18, 2007 appellant filed a proper person motion to correct an illegal sentence and a proper person motion for the appointment of counsel in the district court. The State opposed the motion to correct an illegal sentence. On May 22, 2007, the district court denied both of appellant's motions.¹ This appeal followed.

¹To the extent that appellant challenges the district court's denial of his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying appellant's motion.

In his motion, appellant contended that the deadly weapon enhancement was illegal because the jury did not find the facts necessary to enhance his sentence, namely that he used a deadly weapon in the commission of a crime, pursuant to NRS 193.165. Appellant claimed that the deadly weapon enhancement was improper because the jury was not presented with the issue, contrary to Apprendi v. New Jersey² and Blakely v. Washington.³ Appellant further argued that the State improperly included language relating to the deadly weapon enhancement within the count of voluntary manslaughter. Appellant argued that because of this, the charging document was defective at the outset, and as a result the district court was without jurisdiction to hear his case. Finally, appellant argued that his sentence was improper because the use of a firearm is an element of the crime of voluntary manslaughter.

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

²530 U.S. 466 (2000).

³542 U.S. 296 (2004).

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)).

Our review of the record on appeal reveals that the district court did not err in denying appellant's 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,⁶ and the record does not support an argument that the district court was without jurisdiction in this matter. Moreover, as a separate and independent ground to deny relief, appellant's claims were without merit. Significantly, appellant entered a guilty plea to the crime of voluntary manslaughter with the use of a deadly weapon and waived his right to a jury trial. Pursuant to his guilty plea, appellant admitted the facts that supported all the elements of the offense. Therefore, the district court was permitted to impose the deadly weapon enhancement on the voluntary manslaughter count and enhance appellant's sentence.⁷ Additionally, the State did not err in charging the deadly weapon enhancement along with the primary offense, as the deadly weapon enhancement constitutes an additional penalty for the primary offense rather than a separate offense.⁸

⁶See NRS 200.080; 1995 Nev. Stat., ch. 455 § 1 at 1431 (NRS 193.165).

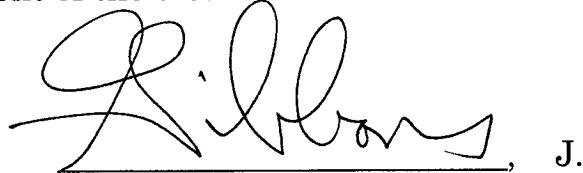
⁷See Blakely, 542 U.S. at 303 (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

⁸See 1995 Nev. Stat., ch. 455 § 1 at 1431 (NRS 193.165(2)); Woofter v. O'Donnell, 91 Nev. 756, 761-62, 542 P.2d 1396, 1399-1400 (1975).

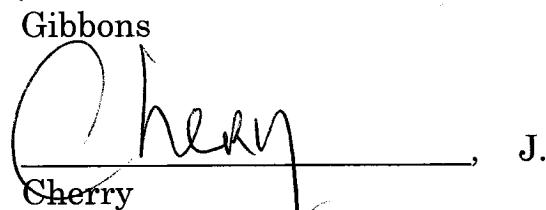
Finally, a deadly weapon is not a necessary element of the crime of voluntary manslaughter.⁹

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.¹⁰ Accordingly, we

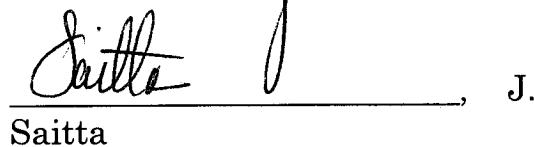
ORDER the judgment of the district court AFFIRMED.¹¹



Gibbons, J.



Cherry, J.



Saitta, J.

⁹See NRS 200.040; Williams v. State, 99 Nev. 797, 798, 671 P.2d 635, 636 (1983).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Chief Judge, Eighth Judicial District
Honorable John S. McGroarty, Senior Judge
Brandon Jamar Olds
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk