

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51671

FILED

NOV 21 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Robert E. Rose, Judge.

On December 1, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of 24 to 60 months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.¹ Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus.²

On April 15, 2008, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

¹Howard v. State, Docket No. 42344 (Order of Affirmance, May 10, 2004).

²Howard v. State, Docket No. 45421 (Order of Affirmance, September 23, 2005).

motion. On May 30, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the State improperly charged the deadly weapon enhancements in the same counts as the primary offenses.

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.³ "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.'"⁴

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction.⁵ Appellant entered a guilty plea to two counts of robbery with the use of a deadly weapon, and thus, the district court properly imposed the deadly weapon enhancements.⁶ There was

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

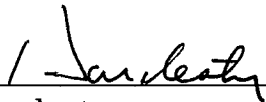
⁵NRS 200.380(2).

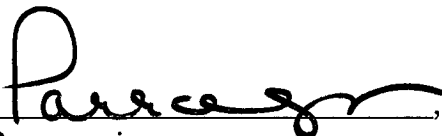
⁶See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

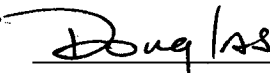
nothing improper in charging the deadly weapon enhancements in the same counts as the primary offenses, and a deadly weapon is not a necessary element of robbery.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁷See 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165(2)) (providing that the deadly weapon enhancement does not create a separate offense but provides an additional penalty for the primary offense); NRS 200.380(1) (defining the crime of robbery as the unlawful taking of personal property from the person or presence of another against his will by means of force or violence or fear of injury). Notably, the use of a gun is not a necessary element of robbery.

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

⁹We 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
Hon. Robert E. Rose, Senior Justice
Abdul Howard
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk