

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX CHRISTOPHER EWING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39183

FILED

OCT 18 2002

ORDER OF AFFIRMANCE

JANET M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CO-DEPUTY CLERK

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

On May 2, 1985, the district court convicted appellant, pursuant to a jury verdict, of burglary, escape, and two counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling 110 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 15, 1986.

On February 17, 1990, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. The district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 9, 1990, the

¹Ewing v. State, Docket No. 16592 (Order Dismissing Appeal, June 26, 1986).

district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

On July 10, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 1, 1995, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.³

On November 20, 1998, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 19, 1999, the district court denied appellant's petition as untimely and successive. This court affirmed the order of the district court.⁴

On January 11, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. On January 28, 2002, the district court denied appellant's motion. This appeal followed.

In his motion, appellant challenged the deadly weapon enhancements. First, he claimed that the legislature did not intend for an

²See Ewing v. State, Docket No. 21199 (Order Dismissing Appeal, June 29, 1990).

³See Ewing v. State, Docket No. 27550 (Order Dismissing Appeal, November 30, 1995).

⁴See Ewing v. State, Docket No. 33910 (Order of Affirmance, November 29, 2000).

axe handle to be considered a deadly weapon, and that in 1985, the time that he was sentenced, the deadly weapon statute was vague in its definition of a deadly weapon. Second, he claimed that the deadly weapon enhancements are constitutionally infirm pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000), because the trial judge did not instruct the jury on the elements of a deadly weapon.

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.⁵ "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."⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's challenges to the deadly weapon enhancements fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentences were facially legal and there is no indication in the record that the district court was without jurisdiction to impose the sentences.⁷ Moreover, the jury was given instructions on the deadly weapon enhancements and subsequently returned verdicts that appellant was

⁵Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

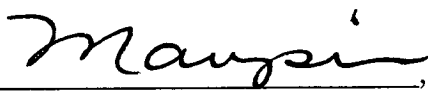
⁶Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁷See 1983 Nev. Stat., ch. 294, § 1, at 717; 1979 Nev. Stat., ch. 655, §121, at 1456; 1983 Nev. Stat., ch. 218, § 6, at 512; 1981 Nev. Stat., ch. 64, § 1, at 158.


guilty of two counts of attempted murder with the use of a deadly weapon. Thus, the jury determined beyond on reasonable doubt that appellant had used a deadly weapon in the commission of the attempted murders.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Shearing


_____, J.
Becker

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Alex Christopher Ewing
Clark County Clerk

⁸See Apprendi, 530 U.S. at 490 (2000).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).