

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY D. GOODRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40474

FILED

JUN 28 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Appellant was originally convicted, pursuant to a plea of nolo contendere,¹ of one count of conspiracy to commit robbery, one count of robbery with the use of a deadly weapon, and one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant: for conspiracy, to a prison term of 28 to 72 months; for robbery, to a concurrent prison term of 72 to 180 months, with an equal and consecutive term for the use of a deadly weapon; and for murder, to a consecutive prison term of 10 to 25 years, with an equal and consecutive term for the use of a deadly weapon. Appellant did not file a direct appeal.

On July 26, 2002, appellant filed a proper person motion to correct an illegal sentence. The district court denied the motion, and subsequently appointed counsel for this appeal.

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

Appellant first contends that the district court erred by denying the motion because appellant should not have received a deadly weapon enhancement for the murder conviction. Specifically, appellant argues that the victim was struck and killed by a car, and that a car is not a deadly weapon. This issue was not raised in the motion below and was not litigated in the district court. Accordingly, because appellant raises this issue for the first time in this appeal, we need not consider it.²

Second, appellant contends that he was improperly sentenced due to misrepresentation of material facts by the State. Specifically, appellant argues that the State promised to dismiss a count in exchange for appellant's guilty plea, but that appellant had not actually been indicted on the dismissed count.

"Motions to correct illegal sentences address only the facial legality of a sentence."³ An "illegal sentence" is one that is at variance with the controlling statute or imposed without jurisdiction.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 Appellant's challenge to the validity of his conviction is not properly raised in a motion to correct an illegal

²See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that issues not raised in or considered by the district court need not be considered on appeal).

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

⁴Id.

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

sentence. We therefore conclude that the district court did not err by denying the motion.

Having considered appellant's contentions and concluded that they are either not appropriately raised on appeal or are without merit, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael A. Cherry, District Judge
Law Office of Betsy Allen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk