

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER NIETO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43179

FILED

JUN 16 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion for sentence modification. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On January 5, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of forgery. The district court sentenced appellant to serve a term of twelve to thirty-four months in the Nevada State Prison. The district court imposed this sentence to run consecutively to sentences imposed in district court case numbers C159488 and C133219. No direct appeal was taken.

On March 4, 2004, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On May 3, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court mistakenly believed that he had been to prison twice before. He claimed that the district court would have imposed his sentence to run concurrently to the sentences imposed in the other district court cases if the district court knew that he had never been to prison before.

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."¹ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.²


Our review of the record on appeal reveals that the district court did not err in denying the motion. The record does not support appellant's assertion. The presentence investigation report accurately reported that in 1999 his probation was revoked in district court case number C133219, which resulted in the execution of the original term of imprisonment, and that in 1999 in district court case number C159488 he was sentenced to an additional term of imprisonment. The fact that he may not yet have started to serve those sentences because he was awaiting the resolution of the proceedings in the instant district court case is not a material mistake about his criminal record. Even assuming that it was a material mistake, appellant failed to demonstrate that it worked to his extreme detriment. The presentence investigation report reflects a total of seven prior felony convictions. Further, appellant committed this crime while on probation in district court case number C133219. Thus, we affirm the order of the district court.

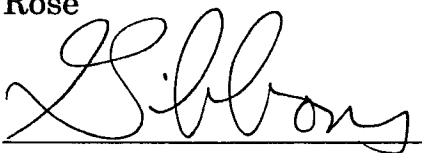
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

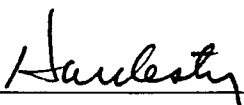
²Id. at 708-09 n.2, 918 P.2d at 325 n.2.

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Peter Nieto
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).