

IN THE SUPREME COURT OF THE STATE OF NEVADA

LOUIS J. TOMANINI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43359

FILED

NOV 17 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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; John S. McGroarty, Judge.

On June 20, 2002, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. No direct appeal was taken.

On April 15, 2004, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On May 7, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his adjudication as a habitual criminal was improper because: (1) he had already been adjudicated a habitual criminal in another case; (2) the district court did not determine that it was just and proper for him to be adjudicated a habitual criminal; and (3) he only committed non-violent offenses. Appellant further argued that his conviction was improper because he was not represented by counsel at sentencing and because the State charged him with the incorrect offense.


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

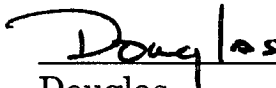
Our review of the record on appeal reveals that appellant's claims fell outside of the narrow scope of permissible claims. Thus, the district court did not err in denying appellant's motion.

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.⁴


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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.

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

⁴We 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: Hon. John S. McGroarty, District Judge
Louis J. Tomanini
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk