

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY ERNST GOETZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43636

**FILED**

JAN 07 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's motion to modify his sentence. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On July 30, 1998, appellant Wesley Ernst Goetz was convicted, pursuant to a guilty plea, of three counts of lewdness with a child under the age of fourteen years. The district court sentenced Goetz to three consecutive prison terms of 24 to 62 months and then suspended execution of the sentence, placing him on probation for a time period not to exceed 5 years. Goetz did not file a direct appeal.

On June 11, 1999, the district court entered an order revoking Goetz's probation. Goetz did not appeal. Approximately five years later, on May 5, 2004, Goetz filed a "motion to modify sentence pursuant to NRS 176A.630(5) and request for hearing." The State opposed the motion, and Goetz filed a reply to the State's opposition. On June 25, 2004, the district court denied the motion. Goetz filed this timely appeal.

Goetz argues that the district court erred in denying his motion because "plain error" occurred at the probation revocation hearing that worked to his extreme detriment. Specifically, Goetz argues that the district court overlooked the fact that it had jurisdiction to modify the

original sentence to run the sentences concurrently.<sup>1</sup> Goetz argues that the mistake of law amounted to a due process violation because the district court would have ordered the sentences to run concurrently if it knew it had authority to do so. We conclude that Goetz's contention lacks merit.

Generally, a district court lacks jurisdiction to modify a sentence after the defendant begins to serve it.<sup>2</sup> An exception to this rule applies when the court made a mistake in rendering a judgment that worked to the extreme detriment of the defendant; however, this exception only applies if the error concerned the defendant's criminal record.<sup>3</sup> Therefore, a motion to modify a sentence may be granted only on "very narrow due process grounds."<sup>4</sup> Further, a motion to modify a sentence that raises issues outside the very narrow scope of issues permissible "should be summarily denied."<sup>5</sup>

We conclude that Goetz failed to show that the district court abused its discretion in denying his motion. The district court expressly

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<sup>1</sup>NRS 176A.630(5) provides that "[u]pon determining that the probationer has violated a condition of his probation" the district court may "[m]odify the original sentence imposed by reducing the term of imprisonment and cause the modified sentence to be executed."

<sup>2</sup>See Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

<sup>3</sup>See Edwards v. State, 112 Nev. 704, 707-08, 918 P.2d 321, 324 (1996); State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).


<sup>4</sup>Edwards, 112 Nev. at 707, 918 P.2d at 324.

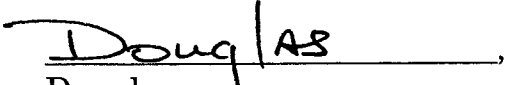
<sup>5</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

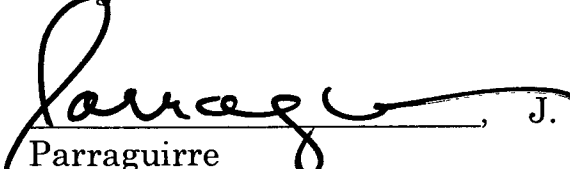
found that even if counsel had requested concurrent sentences at the probation revocation proceeding, it "would not have exercised its statutory discretion to modify or reduce Goetz's sentence." To the extent that Goetz claims that he received ineffective assistance of counsel at the probation revocation proceeding, we decline to consider his claim because it falls outside of the narrow scope of issues permissible in a motion to modify a sentence.

Having considered Goetz's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Janet J. Berry, District Judge  
Edwin T. Basl  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk