

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY ALAN FONSECA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43736

**FILED**

JUL 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Timothy A. Fonseca's motion for sentence modification/reduction. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On January 11, 2000, the district court convicted Fonseca, pursuant to a guilty plea, of driving and/or being in actual physical control while under the influence of intoxicating liquor resulting in death, and leaving the scene of an accident. The district court sentenced Fonseca to a total of 77 to 330 months in the Nevada State Prison. No direct appeal was taken.

On June 18, 2004, Fonseca filed a proper person motion for sentence modification/reduction in the district court. The State opposed the motion. The district court denied the motion on August 3, 2004. This appeal followed.

A motion to modify a sentence "is limited in scope to sentences based on mistaken assumption about a defendant's criminal record which work to the defendant's extreme detriment."<sup>1</sup>

Fonseca claimed that the district court relied on erroneous information within his presentence investigation (PSI) report. Specifically, Fonseca claimed that the PSI report contained errors as to whether he was sentenced to serve two terms in prison, and whether two of his convictions were the result of one event. Fonseca failed to demonstrate a mistaken assumption about his criminal record that worked to his extreme detriment and his claim lacks merit. Fonseca does not dispute that he actually committed all of the crimes contained in his PSI report. Fonseca had three prior felony convictions and five prior misdemeanors on this report. Fonseca's counsel wrote a pre-sentence memorandum to the district court explaining the circumstances of Fonseca's prison terms and convictions, effectively correcting any possible errors. Furthermore, Fonseca benefited from the plea agreement by avoiding habitual criminal status, and by the elimination of six additional charges, four of them felonies, as listed in his indictment. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion to modify the sentence.<sup>2</sup>


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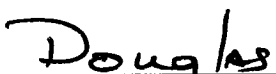
<sup>1</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


<sup>2</sup>Fonseca's claim that the district judge stated that he would have sentenced him as "a man who just had a (sic) accident" if not for the erroneous PSI report is belied by the record. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Fonseca is not entitled to relief and that briefing and oral argument are unwarranted.<sup>3</sup> Accordingly, we

ORDER this appeal AFFIRMED.<sup>4</sup>

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

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

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

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

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

<sup>4</sup>We have reviewed all documents that Fonseca 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 Fonseca 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.