

IN THE SUPREME COURT OF THE STATE OF NEVADA


FRED CAMERON MARCHBANK, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44442

FILED

APR 06 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to modify judgment. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On July 25, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of 60 to 150 months in the Nevada State Prison.¹ Appellant was also ordered to serve a special sentence of lifetime supervision. Appellant did not file a direct appeal.

On May 27, 2004, appellant filed a proper person motion to modify judgment in the district court. The State opposed the motion. Appellant filed a reply to the State's opposition. On November 30, 2004, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that lifetime supervision was applied to him as a punishment and that he never agreed to accept lifetime supervision as punishment. Appellant admitted that he was informed that he would be subject to lifetime supervision, but argued that

¹On November 1, 2001, the district court entered a corrected judgment of conviction.

in Palmer v. State² this court changed the status of lifetime supervision from a civil non-punitive sentence to a cumulative sentence or punishment that was not intended for one 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."³ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁴ Our review of the record on appeal reveals that the district court did not err in denying appellant's motion because his claim fell outside the narrow scope of claims permissible in a motion to modify a sentence. Appellant did not argue that the district court relied on any mistaken assumptions about his criminal record in sentencing appellant.

Moreover, as a separate and independent ground for denial, appellant's claim lacked merit. NRS 176.0931 requires imposition of a special sentence of lifetime supervision if the defendant is convicted of a sexual offense. Attempted sexual assault is a sexual offense.⁵ Therefore, the special sentence of lifetime supervision was properly imposed upon appellant. Contrary to appellant's assertion, this court did not alter the status or application of lifetime supervision in Palmer. Rather, in Palmer this court stated that, "[d]espite some indications that the Nevada

²118 Nev. 823, 59 P.3d 1192 (2002).

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

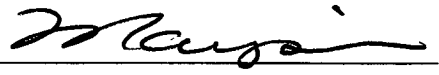
⁴Id. at 708-09 n.2, 918 P.2d at 325 n.2.

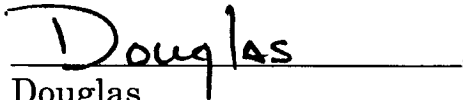
⁵See NRS 176.0931(5)(b)(1), (2).

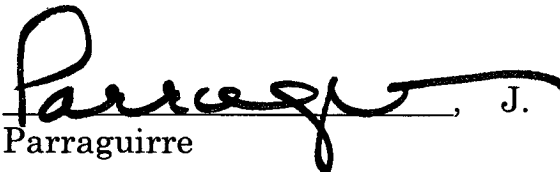
Legislature intended lifetime supervision to be a civil law enforcement tool, . . . it is sufficiently punitive in nature and effect as to render it a direct penal consequence of a guilty plea, a consequence of which the defendant must be advised."⁶ Appellant acknowledged that he was specifically advised that lifetime supervision was a consequence of his guilty plea, which is all that this court requires.⁷ Therefore, the district court correctly determined that there was no basis for modification of the sentence.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁶Palmer, 118 Nev. at 829, 59 P.3d at 1196.

⁷Id. at 831, 59 P.3d at 1197.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Connie J. Steinheimer, District Judge
Fred Cameron Marchbank Jr.
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk