

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM GARDNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44628

FILED

MAY 27 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant William Gardner's motion to correct an illegal sentence or modify sentence. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

On March 27, 2002, the district court convicted Gardner, pursuant to a guilty plea, of trafficking in a controlled substance in district court case number CR3684. The district court sentenced Gardner to serve a term of 72 to 180 months in the Nevada State Prison. Gardner did not file a direct appeal.

On January 13, 2005, Gardner filed a proper person motion to correct an illegal sentence or modify sentence in the district court. On January 19, 2005, the district court dismissed Gardner's motion. This appeal followed.

In his motion, Gardner contended that his sentence is illegal because he never possessed a controlled substance. Gardner further appeared to argue that his sentence should be modified because the district court relied heavily on his pre-sentence investigation report.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without

jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.¹ "A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence."² 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

We conclude that the district court did not err in denying Gardner relief. Gardner's challenge to his judgment of conviction is outside the scope of a motion to correct an illegal sentence. Gardner's sentence fell within the range prescribed by the applicable statute,⁵ and there is nothing in the record to suggest that the district court was without jurisdiction to impose his sentence. Further, Gardner did not establish that his sentence was based on a mistaken assumption about his criminal record that worked to his extreme detriment. We therefore affirm the district court's denial of Gardner's motion.

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

²Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

³Id.

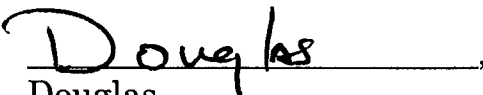
⁴Id. at 708-09 n.2, 918 P.2d at 325 n.2.

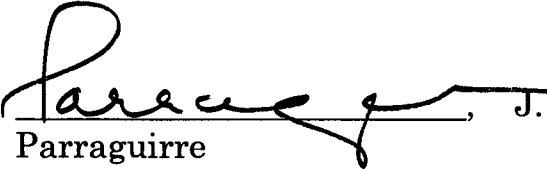
⁵See NRS 453.3385(2).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gardner is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
William Gardner
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).