

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAUN ALLEN MOORE,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
MICHAEL BUDGE,
Respondent.

No. 44702

FILED

JUL 01 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 post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On March 14, 2003 appellant Shaun Allen Moore was convicted, pursuant to a guilty plea, of two counts of burglary. The district court sentenced Moore to serve two consecutive prison terms of 36 to 120 months. Moore filed a direct appeal, and this court affirmed the judgment of conviction.¹

On August 28, 2003, Moore filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and counsel supplemented the petition. The State moved for partial dismissal of the petition, arguing that the claims of ineffective assistance of counsel were belied by the record. Moore filed a

¹Moore v. State, Docket No. 41273 (Order of Affirmance, July 9, 2003).

reply to the State's motion for partial dismissal. The district court granted the State's motion for partial dismissal and scheduled a hearing on Moore's remaining claim. Thereafter, the parties stipulated to treat Moore's timely post-conviction petition as a motion to modify his sentence because the remaining claim alleged that he was sentenced based on a mistake in the presentence investigation report (PSI) which worked to his detriment. After hearing arguments from counsel, the district court denied the petition, finding that the mistake in the PSI did not affect the sentence imposed and, therefore did not work to Moore's extreme detriment. Moore filed this timely appeal.

Moore argues that the district court clearly erred in ruling that the mistaken reference in the PSI designating a prior escape conviction as a violent offense did not affect the sentence. We conclude that Moore's contention lacks merit.

The district court has inherent authority to modify a sentence based on a mistaken assumption of a defendant's criminal record provided the misapprehension worked to the extreme detriment of the defendant.² A district court's determination of whether a misapprehension worked to the extreme detriment of the defendant will not be overturned where supported by substantial evidence in the record.³

²Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996).

³State v. District Court, 100 Nev. 90, 102, 677 P.2d 1044, 1052 (1984) ("On appeal, every presumption is in favor of the propriety of the trial court's action in the absence of a showing of error.").

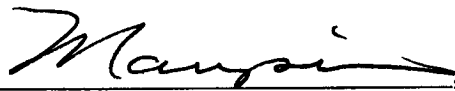
In this case, the district court found that the designation of the prior escape conviction as violent did not affect the sentence imposed. In considering whether the mistake in the PSI was detrimental to Moore, the district court heard arguments from counsel, reviewed the entire case file, including the transcripts of the sentencing hearing, and noted that it had a "clear memory of the case." The district court, at the post-conviction hearing, explained its justification for the sentence:

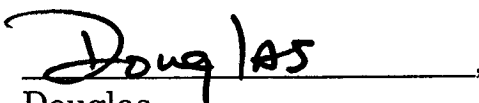
My concern in entering a sentence in this case was . . . Mr. Moore's threat to the community, the fact that he engaged in [the burglaries] shortly after being paroled out of Idaho, and that the fact that there had been a violent robbery conviction in 1995.

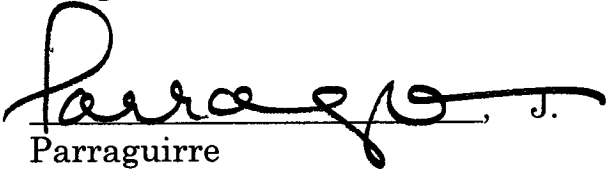
The district court also explained that in imposing sentence it gave little significance to the 1989 escape conviction because of the age of the conviction and because it presumed that the conviction did not involve more than a "technical escape." Although the original PSI referenced force and violence, the district court concluded at the original sentencing that force and violence did not play a significant role in the escape offense because there was no reference to violence in the disposition column and Moore received a light sentence for an escape offense, namely, 12 months probation and 90 days in jail. Moore has failed to show that the district court's finding that the mistake in the PSI did not work to Moore's extreme detriment was not supported by the substantial evidence or was clearly wrong. Accordingly, we conclude that the district court did not err in denying the petition.

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

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk