

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MICHAEL ALLINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44913

FILED

JUN 01 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence, or in the alternative, a motion to modify a sentence. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On March 15, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison. The district court imposed this sentence to run consecutively to the sentence imposed in C93-1045 and concurrently with C94-0122. Appellant voluntarily dismissed his direct appeal in 1995.¹

On December 7, 2004, appellant filed a proper person motion to correct an illegal sentence, or in the alternative, motion to modify a sentence in the district court. On March 2, 2005, the district court denied appellant's motion. This appeal followed.

¹Allinger v. State, Docket No. 27063 (Order Dismissing Appeal, September 20, 1995).

In his motion, appellant contended that his co-defendant, who was the more aggressive and culpable participant, received a more lenient sentence after the co-defendant's original sentence was reversed. He claimed that he received a disparate sentence and that this violates equal protection.

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.² "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.'"³ A motion to modify a sentence, on the other hand, "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."⁴ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there was no indication that the district court was

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

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).


⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


⁵Id. at 708-09 n.2, 918 P.2d at 325 n.2.

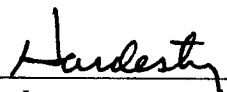
without jurisdiction in the matter.⁶ Further, appellant failed to demonstrate that his sentence was based on any mistaken assumptions about his criminal record that worked to his extreme detriment. Therefore, we affirm the order of the district court.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁶1993 Nev. Stat., ch. 142, § 1, at 253 (providing for a term of imprisonment of not less than one year nor more than fifteen years for robbery); 1991 Nev. Stat., ch. 403, § 6, at 1059 (providing for an equal and consecutive term for the deadly weapon enhancement).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that appellant 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 appellant 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.

cc: Hon. Jerome Polaha, District Judge
John Michael Allinger
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk