IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON LAWRENCE BLAINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44927

FILED

MAR 24 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Jason Lawrence Blaine's motion requesting, in part, that the district court modify his sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Blaine was convicted, pursuant to a guilty plea, of one count of statutory sexual seduction. On February 4, 2005, the district court entered a written judgment of conviction sentencing Blaine to serve a prison term of 18-60 months. On February 4, 2005, Blaine filed a document entitled "Motion for Rehearing." In his motion, Blaine contended that (1) the presentence investigation report prepared by the Division of Parole and Probation "incorrectly states that [he] fails to take responsibility for his actions and blames the victim," and (2) he should be given another opportunity to complete a psychosexual evaluation after initially refusing to cooperate with the doctor preparing the report. The State opposed the motion. The district court conducted a hearing and entered a written order denying Blaine's motion on March 8, 2005. On

March 15, 2005, Blaine filed a notice of appeal from the district court's order "[d]enying the Defendants [sic] Motion for Rehearing and Request for an Independent Psyco-sexual [sic] evaluation." This timely appeal followed.[1]

Blaine raises the same arguments on appeal and contends that the district court abused its discretion in denying his motion. As a result, Blaine claims that he was deprived of the benefit of his plea bargain by the district court's refusal to grant him probation. We disagree.

To the extent that Blaine may be appealing from the district court's refusal to modify his sentence based on a misstatement of fact and law,[2] we conclude that the district court did not abuse its discretion in denying Blaine's motion. Blaine failed to establish that his sentence was based on a mistaken assumption about his criminal record that worked to his detriment.[3] Further, Blaine's contention that he was improperly

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[1]Blaine did not pursue a direct appeal from the judgment of conviction and sentence.

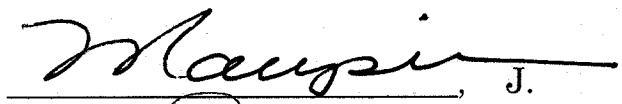
[2]See Shade v. State, 110 Nev. 57, 61 n.1, 867 P.2d 393, 395 n.1 (1994) ("[i]t is the substance of an order, rather than its caption, which is determinative of whether the order is appealable").

[3]See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984); see also Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

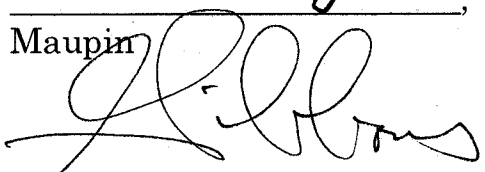
deprived of the benefit of his plea bargain is belied by the record[4] and falls outside the scope of issues permissible in a motion for sentence modification.[5] Therefore, we conclude that Blaine is not entitled to relief. To the extent, however, that Blaine may be attempting to appeal from the order denying his motion for rehearing, this court lacks jurisdiction to consider such an appeal.[6]

Having considered Blaine's contentions and concluded that they are without merit, we

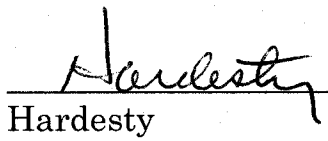
ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

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[4]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[5]See Edwards, 112 Nev. at 708-09 n.2, 918 P.2d at 325 n.2.

[6]See Alvis v. State, Gaming Control Bd., 99 Nev. 184, 660 P.2d 980 (1983) (holding that an order denying a motion for rehearing is not independently appealable).

cc: Hon. Michelle Leavitt, District Judge
Potter Law Offices
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk