IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DEE VEACH, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 45047
ROBERT DEE VEACH, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 45539

FILED

NOV 16 2005

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

ORDER OF AFFIRMANCE

Docket No. 45047 is a proper person appeal from an order of the district court denying a motion for reconsideration of sentence. Docket No. 45539 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.[1] Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On April 22, 1997, the district court convicted appellant, pursuant to a guilty plea, of sexual assault on a child under the age of sixteen years. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years had been served. No direct appeal was taken.

[1]See NRAP 3(b).

On July 31, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 23, 2000, the district court dismissed the petition. This court affirmed the order of the district court on appeal.[2]

On September 16, 2002, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On October 17, 2002, the district court denied the motion. This court affirmed the order of the district court on appeal.[3]

Docket No. 45047

On December 28, 2004, appellant filed a motion for reconsideration of his sentence. The State opposed the motion. Appellant filed a response. Construing the motion to be a motion for modification of the sentence, the district court denied the motion.[4] This appeal followed.[5]

---

[2]Veach v. State, Docket No. 36828 (Order of Affirmance, December 4, 2001).

[3]Veach v. State, Docket No. 40515 (Order of Affirmance, August 20, 2003).

[4]We conclude that the district court did not err in construing the motion to be a motion for modification of the sentence because the relief sought was in the nature of a motion for modification.

[5]Appellant filed a motion for reconsideration of the district court's order denying his motion for reconsideration/modification of the sentence. No statute or court rule permits for an appeal from an order denying such a motion. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995). Accordingly, to the extent that appellant sought to appeal from the order

continued on next page . . .

In his motion, appellant requested modification of his sentence on the ground that his sentence was essentially a death sentence as he would be 73 years old before he was eligible for consideration by the parole board.

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."[6] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[7]

We conclude that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Accordingly, we affirm the order of the district court denying appellant's motion.

Docket No. 45539

On May 9, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a motion for the appointment of counsel and motion to file a successive petition. Pursuant to NRS 34.750 and 34.770, the district

---

. . . *continued*
denying his motion for reconsideration of the district court's order, we conclude that we lack jurisdiction to consider this appeal.

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

[7]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On June 8, 2005, the district court denied appellant's motions and petition. This appeal followed.[8]

Appellant filed his petition more than eight years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.[9] Moreover, appellant's petition was an abuse of the writ because he had previously filed a post-conviction petition for a writ of habeas corpus, and he raised new or different claims from the prior petition.[10] Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.[11]

In an attempt to excuse his procedural defects, appellant argued that he was a layman of law and he only recently discovered that his guilty plea was invalid because he had not been informed that he would have a special sentence of lifetime supervision. Appellant relied on this court's ruling in Means v. State.[12]

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed

---

[8]We conclude that the district court did not abuse its discretion in declining to appoint counsel. See NRS 34.750.

[9]See NRS 34.726(1).

[10]See NRS 34.810(2).

[11]See NRS 34.726(1); NRS 34.810(3).

[12]120 Nev. ___, 103 P.3d 25 (2004).

to demonstrate good cause. Appellant did not provide any specific facts as to when he learned about the special sentence of lifetime supervision, and thus, appellant failed to demonstrate that he filed his petition within a reasonable time of learning of the special sentence of lifetime supervision.[13] Further, Means did not announce the holding that a defendant must be informed of the special sentence of lifetime supervision prior to entry of the plea. Rather, Means recited this holding as announced in Palmer v. State[14] in 2002.[15] Consequently, this claim may have been reasonably available prior to the filing of his 2005 petition, and appellant failed to demonstrate that the decisions in Means and Palmer excused appellant's procedural defects.[16]

Even assuming without deciding that Palmer applies retroactively to appellant, appellant failed to demonstrate that he would be prejudiced by the application of the procedural bars in the instant case.[17] Appellant cannot demonstrate that any error relating to the lack of advice about lifetime supervision worked to his actual and substantial

---

[13]See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

[14]118 Nev. 823, 59 P.3d 1192 (2002).

[15]120 Nev. at ___, 103 P.3d at 36.

[16]See Hathaway, 119 Nev. 248, 71 P.3d 503.

[17]See Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).

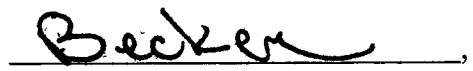
disadvantage because in entering his guilty plea in the instant case appellant agreed to the imposition of a life sentence.[18]

Accordingly, we affirm the order of the district court.

Conclusion

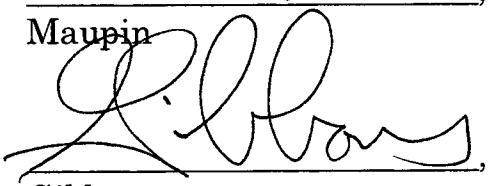
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[19] Accordingly, we

ORDER the judgments of the district court AFFIRMED.



, C.J.
Becker

, J.
Maupin



, J.
Gibbons

---

[18]See Palmer, 118 Nev. at 829 n.17, 59 P.3d at 1195 n.17 (noting that most jurisdictions find the lack of an advisement to be harmless in instances where the term of supervised released was less than or equal to the maximum prison term of which the defendant was advised); see also Hill v. Lockhart, 474 U.S. 52 (1985); State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

[19]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Robert H. Perry, District Judge
Robert Dee Veach
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk