

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOMER RICHARD BRAGGINS, JR.  
A/K/A HOMER R. BRAGGINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45200

**FILED**

AUG 24 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for resentencing. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On July 17, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen years and two counts of statutory sexual seduction. The district court sentenced appellant to serve a term of forty-eight to one hundred and twenty months in the Nevada State Prison for the attempted lewdness count and concurrent terms of twelve to thirty months for the statutory sexual seduction counts. No direct appeal was taken.

On July 22, 2004, appellant filed a proper person motion for sentence modification in the district court. On August 27, 2004, the district court denied the motion. This court affirmed the order of the district court on appeal.<sup>1</sup>

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<sup>1</sup>Braggins v. State, Docket No. 43907 (Order of Affirmance, February 3, 2005).

On March 11, 2005, appellant filed a proper person motion document labeled "motion for resentencing" in the district court. The State opposed the motion. Appellant filed a reply. On April 8, 2005, the district court summarily denied the appellant's motion. This appeal followed.

In his motion, appellant claimed that the State breached the terms of the plea agreement by opposing probation. He further claimed that the district court violated the terms and the spirit of the plea agreement by refusing to impose probation. Appellant asserted that probation was required if he received a positive psychosexual evaluation and if he appeared for sentencing.

Preliminarily, we note that there is no authority for the type of motion filed by appellant. We conclude that because appellant is seeking modification of his sentence that his motion should be construed to be a motion to modify a sentence. 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."<sup>2</sup> A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>3</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. The issues raised by appellant fell outside the narrow scope of claims permissible in a motion to modify a sentence, and thus, summary denial of the petition was appropriate. Moreover, as a separate and independent ground to deny

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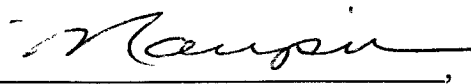
<sup>2</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

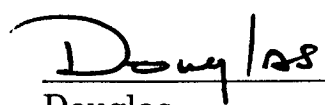
<sup>3</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

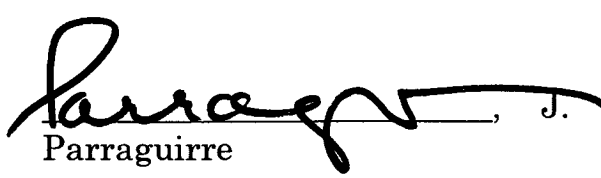
relief, appellant failed to demonstrate that the plea agreement was breached. The plea agreement provided that appellant would be eligible for probation if appellant received a positive psychosexual evaluation. This provision in the plea agreement did not mandate probation simply because a positive psychosexual evaluation was presented. Nor was probation mandated simply because appellant appeared for the sentencing hearing. The written plea agreement specifically informed appellant that the matter of sentencing was left to the discretion of the district court, and appellant affirmatively indicated in the written guilty plea agreement that he was not promised a particular sentence. 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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have received appellant's proper person motion for the appointment of counsel, and we deny the motion as moot.

cc: Hon. Valorie Vega, District Judge  
Homer Richard Braggins Jr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk