

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KREIDEL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45277

**FILED**

DEC 21 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
*J. Bloom*  
CLERK

This is a proper person appeal from an order of the district court denying a motion for sentence modification. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On October 25, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve two concurrent terms of eighteen to forty-eight months in the Nevada State Prison.<sup>1</sup> No direct appeal was taken

On March 18, 2005, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On May 3, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the presentence report contained an error relating to a 1980 conviction. Specifically, appellant claimed that the presentence report erroneously stated that he had not

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<sup>1</sup>The district court originally provided appellant an opportunity to successfully complete Drug Court. If appellant had successfully completed Drug Court, appellant was to be permitted to withdraw his plea to felony offenses and enter a plea to a gross misdemeanor with credit for time served. However, appellant did not successfully complete Drug Court.

successfully completed probation for the 1980 conviction. He argued that he had expired probation before a probation violation warrant had been issued in that case. He noted that the 1980 conviction was vacated in 1988 allegedly due to a problem with the revocation of probation. Appellant claimed that the district court would have imposed a sentence of twelve to thirty-two months for each count as recommended in the presentence report absent the alleged mistake about his 1980 conviction.

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. Appellant failed to demonstrate that the fact of a probation revocation in a twenty-five year old case made any difference to the sentencing court. The presentence report indicated that the 1980 conviction was vacated. However, the district court stated at sentencing that that it was more concerned with the present offenses than with the twenty-five year old offense. Before the court in 2004 was an individual who had failed Drug Court and had several other pending criminal court cases. Appellant failed to demonstrate that the district court relied on highly suspect or palpable

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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.

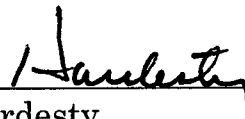
evidence in sentencing appellant.<sup>4</sup> Therefore, we affirm the order of the district court.

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

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

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<sup>4</sup>See Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976).

<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).