

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW SCOTT WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45582

FILED

NOV 16 2005

ORDER OF AFFIRMANCE

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

This is proper person appeal from an order of the district court denying appellant's motion to correct and/or modify an illegal sentence. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On July 30, 1998, the district convicted appellant, pursuant to a guilty plea, of robbery with use of a deadly weapon and second degree kidnapping. The district court sentenced appellant to serve three consecutive sentences of 72 to 180 months in the Nevada State Prison. No direct appeal was taken.

On February 20, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Also on February 20, 2003, the district court dismissed the petition as untimely. This court dismissed appellant's appeal because the notice of appeal was untimely filed.¹

¹White v. State, Docket No. 41481 (Order Dismissing Appeal, July 30, 2003).

On June 8, 2005, appellant filed a motion to correct and/or modify an illegal sentence in the district court. On June 17, 2005, the district court denied the motion. This appeal followed.

In his motion, appellant contended there was insufficient evidence to support the kidnapping charge. Appellant also contended the district court used special circumstances to justify the three maximum sentences, and that this constituted an enhancement of his sentence in violation of Apprendi v. New Jersey.² Finally, appellant contended his sentence was disproportionate based on his age and his lack of prior adult convictions, and that the sentence was therefore cruel and unusual punishment.

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.³ "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.'"⁴ A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal

²530 U.S. 466 (2000).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

record which work to the defendant's extreme detriment."⁵ A motion to modify and correct an illegal sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claims fell outside the scope of claims permissible in a motion to correct and/or modify an illegal sentence.⁷ Appellant's sentence was facially legal, and there is no indication the district court was without jurisdiction in this matter.⁸ Nothing in Apprendi or its progeny requires that facts that do not increase the sentence beyond the statutory maximum must be presented to a jury.⁹ Finally, appellant failed to demonstrate that the

⁵Id.

⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2.

⁷To the extent appellant raised claims other than those relating to the court's jurisdiction to pronounce sentence, the sentence's relation to the statutory maximum, or the court's reliance on mistaken assumptions about appellant's criminal record, they are outside the limited scope of a motion to correct and/or modify an illegal sentence and we therefore decline to address them.

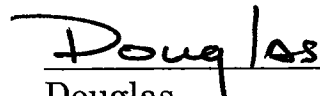
⁸1995 Nev. Stat. ch. 443, § 60, at 1187-88; NRS 200.380; 1995 Nev. Stat. ch. 455, § 1, at 1431; NRS 193.165; 1995 Nev. Stat. ch. 443, § 53, at 1184; NRS 200.310; 1995 Nev. Stat. ch. 443, § 55, at 1185; NRS 200.330.


⁹Apprendi, 530 U.S. at 490 (any fact, other than a prior conviction, that increases a sentence beyond the statutory maximum must be found by a jury beyond a reasonable doubt).

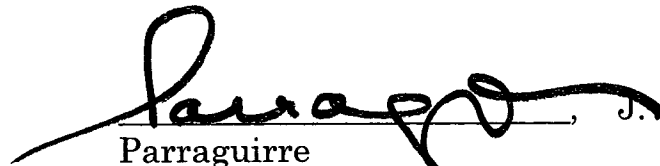
district court relied on mistaken assumptions about appellant's criminal record which worked to appellant's extreme detriment.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
Matthew Scott White
Attorney General George Chanos/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).