

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY MICHAEL MATHEWS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45668

GARY MICHAEL MATHEWS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45669

**FILED**

**JAN 12 2006**

ORDER OF AFFIRMANCE

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

These are consolidated appeals from an order of the district court denying appellant Gary Michael Mathews' proper person motion to modify his sentences.<sup>1</sup> Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On July 29, 2003, Mathews was convicted, pursuant to guilty pleas, of one count each of possession of a forged instrument (district court case no. CR03-0089) and uttering a forged instrument (district court case no. CR03-1142). The district court sentenced Mathews to serve two consecutive prison terms of 19-48 months and ordered him to pay restitution totaling \$1,967.98 to multiple victims. Mathews did not pursue a direct appeal from the judgments of conviction and sentences.

On August 12, 2003, Mathews filed a motion to modify his sentences in the district court. On March 28, 2005, Mathews filed

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<sup>1</sup>Counsel was appointed to assist Mathews in this appeal.

additional documents in the district court pertaining to his motion to modify. Mathews asked the district court to modify his sentences to run concurrently, rather than consecutively, because he is ill and does not “have a very long time to live.” On July 14, 2005, the district court entered a summary order denying Mathews’ motion. These timely appeals followed.

Mathews contends that the district court abused its discretion in denying his motion to modify by not (1) appointing counsel to represent him, (2) conducting an evidentiary hearing, (3) properly considering that he “successfully completed programs in prison,” and (4) properly considering that he is “terminally ill.” We disagree with Mathews’ contention.

Generally, a district court lacks jurisdiction to modify a sentence after the defendant begins to serve it.<sup>2</sup> An exception to this rule applies when the court made a mistake in rendering a judgment that worked to the extreme detriment of the defendant; however, this exception only applies if the error concerned the defendant’s criminal record.<sup>3</sup> Therefore, a motion to modify a sentence may be granted only “on very narrow due process grounds.”<sup>4</sup> Further, a motion to modify a sentence that raises issues outside the very narrow scope of issues permissible “should be summarily denied.”<sup>5</sup>

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<sup>2</sup>Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

<sup>3</sup>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).

<sup>4</sup>Edwards, 112 Nev. at 707, 918 P.2d at 324.

<sup>5</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

We conclude that the district court did not abuse its discretion in denying Mathews' motion. Mathews fails to allege, let alone establish, that his sentence was based on a mistaken assumption about his criminal record that worked to his detriment. The issues raised by Mathews in his motion, and his arguments on appeal, fall outside the scope of issues permissible in a motion for sentence modification. Therefore, we conclude that Mathews is not entitled to relief.

Having considered Mathews' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge  
Mary Lou Wilson  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk