

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERMAINE BRASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45785

FILED

NOV 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. P. [Signature]
DEPUTY 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; Lee A. Gates, Judge.

On January 11, 2005, the district court convicted appellant, pursuant to a guilty plea, of two counts of discharging a firearm at or into a structure, vehicle, aircraft, or watercraft. The district court sentenced appellant to serve two concurrent terms of twenty-four to sixty months in the Nevada State Prison.

On July 28, 2005, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On August 17, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court based the sentence on the following alleged errors in the Parole and Probation Department's presentence report: a list of arrest dates that were actually court appearance dates for a single arrest, an arrest for obstructing a police officer and possession of drugs which never occurred, and gang memberships and affiliations. Appellant also contended the report contradicted itself, at one point reporting appellant had never been on

probation but later correctly reporting appellant had completed two probation terms as a juvenile.

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."¹ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.²

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion.³ The sentencing transcript reveals that appellant's counsel argued to the district court that appellant was not a gang member and noted the report indicated appellant's gang membership was "inactive." Counsel also argued appellant's criminal history only involved use of marijuana and one possession of a firearm charge. The district court responded, "I agree with you on a lot of points, but I think what he did outweighed all the things you said he did. He went into a church parking lot and fired eight shots with women and kids getting out of church . . . This is a serious, serious crime." Appellant failed to demonstrate the district court relied on the alleged errors contained in the report. Further, appellant failed to demonstrate the alleged errors worked to his extreme detriment. While appellant did not receive the minimum sentence, he did receive less than

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


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


³It appears that appellant also requested credit for time spent on house arrest. This court recently held a defendant is not entitled to credit for time spent on house arrest. State v. District Court, 121 Nev. ___, 116 P.3d 834 (2005).

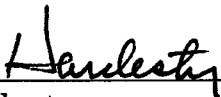
the maximum and his terms were set to run concurrently, not consecutively.⁴

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Lee A. Gates, District Judge
Jermaine Brass
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴NRS 202.285(b).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).