

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH RUBEN SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45846

FILED

DEC 06 2005

ORDER OF AFFIRMANCE

JANE LEE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct/modify sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 4, 2000, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit kidnapping, first degree kidnapping with the use of a deadly weapon, first degree murder with the use of a deadly weapon, conspiracy to commit robbery, and robbery with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of life with parole and a consecutive total of 70 to 312 months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on April 2, 2002.

On July 20, 2005, appellant filed a proper person motion to correct/modify sentence in the district court. The State opposed the motion. On August 12, 2005, the district court denied appellant's motion. This appeal followed.

¹Sanchez v. State, Docket No. 36051 (Order of Affirmance, March 8, 2002).

In his motion, appellant claimed that he received a disproportionate sentence and that the district court sentenced him based on improper considerations. Appellant also claimed that in sentencing him, the district court mistakenly relied on a belief that the crimes were "gang related."²

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

²To the extent appellant raised other claims, including those challenging the sufficiency of the evidence, statements made by the prosecutor, or any expectation by the district court that appellant should have mitigated his culpability, they are outside the very narrow scope of issues permissible in a motion to correct/modify sentence and we therefore decline to reach them. See Edwards v. State, 112 Nev. 704, 708-09, 918 P.2d 321, 324-25 (1996).

³Id. at 708, 918 P.2d at 324.

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

⁵Id.


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


Our review of the record on appeal reveals the district court did not err in denying appellant's motion to correct or modify his sentence. Appellant's sentence was facially legal,⁷ and there is no indication the district court lacked jurisdiction to pronounce sentence in this case. Appellant failed to demonstrate the district court relied on a mistaken assumption about appellant's criminal record pertaining to gang involvement. At the sentencing, the district court remarked that appellant's failure to attempt to stop his co-defendant from committing the crimes evinced a "gang mentality." Appellant did not object to this statement or to the contents of the Department of Parole and Probation's Presentence Investigation Report, in which appellant admitted to a history of gang involvement.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

⁷NRS 199.480; NRS 200.320; NRS 193.165; NRS 200.030; NRS 200.380.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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