

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT STEPHEN WYLIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46009

FILED

FEB 23 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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

On October 3, 1994, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on May 13, 1997. Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus.²

¹Wylie v. State, Docket No. 26435 (Order Dismissing Appeal, April 21, 1997).

²Wylie v. State, Docket No. 32847 (Order of Affirmance, March 22, 2001).

On August 9, 2005, appellant filed a proper person request for submission of motion and motion to correct an illegal sentence in the district court. The State opposed the motion. Appellant filed a response requesting that his sentence be modified. On September 1, 2005, the district court denied appellant's request and motion.³ This appeal followed.

In his motion, appellant contended: (1) the habitual criminal adjudication was improper because the prior felony convictions were stale and trivial; (2) the district court made a mistake about appellant's criminal record that worked to his extreme detriment; (3) the habitual criminal adjudication was improper because the State's notice of intent to seek habitual criminal treatment was not included in the amended information; (4) the State improperly severed the original robbery charge to include two separate counts of robbery; (5) the habitual criminal adjudication was improper because the district court failed to make a finding that it was just and proper to adjudicate appellant a habitual criminal; (6) the habitual criminal adjudication was improper because the record on appeal does not contain copies of the certified judgments of conviction; and (7) appellant's due process rights were violated.

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.⁴ "A motion to correct an illegal sentence

³We construe the September 1, 2005 order to be a final order denying appellant's motion to correct and modify his sentence.

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁵ 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."⁶ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁷

To the extent that appellant sought to correct an illegal sentence, we conclude the district court correctly denied appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal, and the record does not support any argument that the district court was without jurisdiction in this matter.⁸ Further, a challenge to the validity of the guilty plea is improperly raised in a motion to correct an illegal sentence.

To the extent that appellant's motion may be construed as a motion to modify the sentence, all of appellant's claims fell outside the scope of a motion to modify with the exception of one claim—that in sentencing appellant the district court made a material mistake about appellant's criminal record that worked to his extreme detriment.

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁷Id. at 708-09 n.2, 918 P.2d at 325 n.2.

⁸See 1985 Nev. Stat., ch. 544, §1, at 1643-44.

This court's preliminary review of this appeal revealed that the district court may have erroneously denied this claim. In sentencing appellant, the district court twice referred to a statement in the presentence investigation report that appellant had twelve prior felony convictions. This information was incorrect.

In the context of a habitual criminal adjudication, this court has recognized that multiple counts involving the same act, transaction or occurrence and prosecuted in the same charging document should be treated only as one prior felony conviction.⁹ The face of the presentence investigation report revealed only four valid prior felony convictions: (1) 1963 conviction for one count of burglary; (2) 1967 conviction for one count of interstate transportation of a stolen motor vehicle; (3) 1969 conviction for seven felony counts involving forgery, uttering a forged instrument and buying, receiving or aiding in the concealment of stolen property; and (4) 1984 conviction for one count of attempted robbery with the use of a deadly weapon. The author of the presentence investigation report erroneously totaled the number of felony counts involved in appellant's prior convictions to arrive at the number twelve. The author of the presentence investigation report erroneously included a 1970 conviction for robbery in the felony conviction count when that conviction had been vacated. The author of the presentence investigation report further included a 1975 conviction for conspiracy to commit a felony when there is no information on the face of the presentence investigation report that this was actually a felony conviction. The record does not demonstrate that

⁹Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

appellant had twelve prior felony convictions nor does it demonstrate that appellant had previously been convicted of crimes involving twelve felony counts. Therefore, this court ordered the State to show cause why the district court's decision should not be reversed and the matter remanded for a new sentencing hearing.

The State filed a timely response and first argues that this claim is improperly addressed by this court as it was found by this court "scouring the record." The State argues that this court "connects the dots" for appellant when he vaguely referred to a mistake about his criminal record. Appellant admittedly did not present this claim artfully or in the fashion that is expected from one trained in the law. Appellant is, however, untrained in the law. More importantly, the claim was apparent from the record when reviewing appellant's other claims of errors. Judicial economy necessitates addressing this claim at this time as a motion to modify a sentence made on narrow due process grounds can be raised at any time, and no purpose is served in declining to address this claim at this time.¹⁰ Further, this court may address plain errors or errors of constitutional dimension sua sponte.¹¹ A sentence based upon a material mistake of fact about a defendant's criminal record that worked to his extreme detriment is an error of constitutional dimension—a violation of due process.¹²

¹⁰See Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992).

¹¹See Coleman v. State, 111 Nev. 657, 662, 895 P.2d 653, 656 (1995).

¹²See Passanisi, 108 Nev. at 323, 831 P.2d at 1373-74.

The State acknowledges that the statement in the presentence investigation report that appellant had twelve prior convictions was incorrect, but the State argues that the district court did not rely on this fact in adjudicating appellant a habitual criminal.¹³ The State argues that the record shows that instead the district court was troubled by appellant's long history of escalating offenses.

Our review of the record on appeal reveals that the district court relied on the misstatement in the presentence investigation report that appellant had twelve prior convictions in its decision to adjudicate appellant a habitual criminal. The district court referred to twelve convictions or "strikes" twice during the sentencing hearing. The district court relied on the fact of twelve convictions to conclude that appellant was a "predator" on the community. It is not possible to excise the effect of the mistaken fact of twelve convictions from the district court's statement about appellant's dangerous character. Although appellant's criminal history extends into the 1960's, the criminal history also reveals an approximately decade long break from criminal activity from the early 1970's until the mid-1980's.¹⁴ Because the sentencing court relied on this mistaken information in adjudicating appellant a habitual criminal under

¹³The State appears to maintain that the record demonstrates six valid prior convictions. As discussed earlier, a review of the record on appeal on its face reveals only four valid prior convictions. As discussed earlier, the presentence investigation report's inclusion of a vacated conviction and a conviction which is not specifically identified as a felony in the tally of appellant's prior convictions was in error.

¹⁴The record does not contain any information establishing that appellant received a felony conviction prior to 1984 and after 1974.

NRS 207.010(1)(b) and imposing two consecutive sentences of life without the possibility of parole, we conclude that the district court erred in rejecting appellant's claim to modify his sentence.¹⁵

Accordingly, we reverse the district court's order in part and remand this matter for resentencing and the appointment of counsel. We note that two of the prior convictions, the 1967 and 1969 convictions, used to adjudicate appellant a habitual criminal were stale and trivial.¹⁶ We further note that the district court was erroneously presented with the 1970 conviction for robbery when it had been vacated. Because only one valid prior felony conviction was presented to the district court, the 1984 conviction for attempted robbery with the use of a deadly weapon, it would be an abuse of discretion to adjudicate appellant a habitual criminal.¹⁷ Thus, the district court in resentencing appellant should resentence appellant within the statutory limits of the primary offenses of robbery. We affirm the district court's decision relating to the remainder of appellant's claims for relief.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.¹⁸ Accordingly, we


¹⁵See Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976).

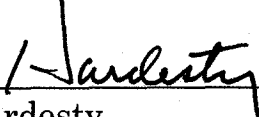
¹⁶See Sessions v. State, 106 Nev. 186, 191, 789 P.2d 1242, 1245 (1990).


¹⁷See 1985 Nev. Stat., ch. 544, § 1, at 1643-44 (requiring two prior felony convictions for small habitual criminal treatment and three prior felony convictions for large habitual criminal treatment).

¹⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁹


_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Becker

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

¹⁹We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.