IN THE SUPREME COURT OF THE STATE OF NEVADA

BRICK P. HOUSTON, JR. A/K/A BRICK POMEROY HOUSTON A/K/A BRICK POMMEROY HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46104

FILED

FEB 24 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for resentencing based upon newly discovered evidence. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 14, 2004, the district court convicted appellant, pursuant to a guilty plea, of grand larceny. The district court sentenced appellant to serve a term of two to five years in the Nevada State Prison. Appellant voluntarily dismissed his direct appeal.[1]

On August 22, 2005, appellant filed a proper person motion for resentencing based upon newly discovered evidence in the district court.

[1]Houston v. State, Docket No. 43269 (Order Dismissing Appeal, January 20, 2005).

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The State opposed the motion. On January 24, 2006, the district court denied appellant's motion.[2] This appeal followed.

In his motion, appellant claimed that the presentence investigation report contained false information about his criminal record. Specifically, appellant claimed that the presentence investigation report falsely stated that he had a prior conviction for escape through violence in 1989. Appellant asserted that his 1989 conviction was instead an assault on a prison employee and habitual offender. Appellant claimed that his sentence was based on this mistake and it effected his prison classification.

Because appellant sought to modify his sentence, we conclude that appellant's motion is properly construed as a motion to modify a sentence. 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."[3] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[4]

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[2]It appears that appellant filed a supplement to his motion on September 27, 2005. However, this supplement was filed after the district court had orally denied the motion, and thus, it is outside the scope of this court's review of this appeal.

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

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

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court in sentencing appellant made a material mistake about his criminal record that worked to his extreme detriment. Appellant's trial counsel informed the district court during the sentencing hearing that the 1989 conviction related to an assault by a prisoner rather than escape. Although the author of the presentence investigation report recommended a sentence of twenty-two to ninety-six months, the district court imposed a sentence of twenty-four to sixty months—a maximum term well below that recommended in the report. Any difficulties appellant has experienced in his classification are outside the scope of a motion to modify the sentence.[5] Therefore, we affirm the order of the district court.

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[5]Although appellant did not demonstrate that the mistake about the nature of the 1989 conviction affected the district court's imposition of sentence, we note that appellant demonstrated that a mistake was in fact made. Appellant attached a copy of the 1989 judgment that clearly indicated that he was adjudged guilty of assault on a prison employee, habitual offender (third conviction). We direct the attorney general to forward a copy of the instant order to the Department of Corrections. We express no opinion as to whether a change in classification is warranted based on the correction of the mistake in appellant's criminal history.

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Eighth Judicial District Court Dept. 16, District Judge
Brick P. Houston Jr.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[7]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.