IN THE SUPREME COURT OF THE STATE OF NEVADA

JON D. BOLTON A/K/A JOHN WAYNE BOLDEN A/K/A JOHN BOLTON A/K/A JOHN DEWAYNE BOLTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46124

FILED

JUN 28 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion requesting sentence modification. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 21, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of stop required on the signal of a police officer. The district court sentenced appellant to serve a term of twelve to thirty months in the Nevada State Prison. Appellant did not file a direct appeal.

On August 10, 2005, appellant filed in the district court a proper person "Motion for Review of Sentence Procedure for Limited Purpose to Recall Presentence Report." The State opposed the motion. On September 7, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the presentence investigation report (PSI) contained false information about his prior

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criminal record. Specifically, the PSI improperly stated that appellant had been adjudicated as a habitual criminal when sentenced for a 1995 offense. Appellant alleged that the false information worked to his extreme detriment because the district court relied upon this information when sentencing him. Appellant further alleged that if incorrect information had not been set forth in the PSI, the district court would have sentenced him to probation or time served.

Because appellant sought modification of his sentence, the motion is properly treated 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."[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 although the PSI presented to the district court in this case included incorrect information relating to appellant's adjudication as a habitual criminal for a 1995 offense, this information did not work to appellant's extreme detriment. Prior to the sentencing hearing, appellant filed two proper person documents with the district court, which informed the district court that in 2001 his habitual criminal adjudication was determined to be

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

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

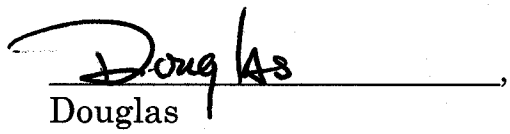
improper and he was resentenced for the 1995 offense. Further, the PSI included a handwritten notation next to the information regarding the 1995 offense, which states "Hab 2001 vacated." Accordingly, it appears that the district court was aware that the information in the PSI was incorrect. Additionally, the district court did not follow the twenty-four to sixty month sentence recommended in the PSI, rather, the district court sentenced appellant to serve twelve to thirty months. Because appellant failed to demonstrate that the incorrect information included in his PSI worked to his extreme detriment, we conclude the district court did not err in denying this claim.

To the extent that appellant claimed that the PSI needed to be corrected in order to prevent errors in his classification within the prison system or the establishment of parole guidelines, this claim fell outside the narrow scope of claims permissible in a motion to modify a sentence. Further, the record on appeal indicates that the district court entered an order in a different district court case that directed the Division of Parole and Probation to immediately update its records to reflect that appellant has not been adjudicated as a habitual offender. Accordingly, we conclude that the district court did not err in denying this claim.

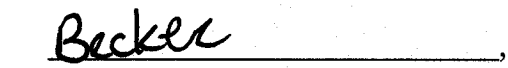
In his motion, appellant also claimed that his counsel was ineffective. This claim fell outside the narrow scope of claims permissible in a motion to modify a sentence. Accordingly, we conclude that the district court did not err in denying this claim.

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.[3] Accordingly, we

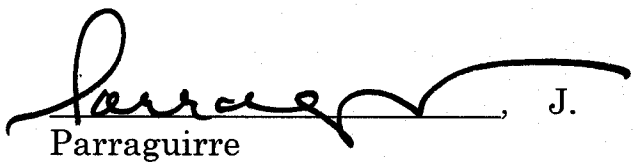
ORDER the judgment of the district court AFFIRMED.[4]



_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Jon D. Bolton
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[4]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.