IN THE SUPREME COURT OF THE STATE OF NEVADA

HEATH ROBERT GRABE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46505

FILED

APR 11 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 for resentencing." Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On June 1, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of fifteen years in the Nevada State Prison. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.[1]

On November 23, 2005, appellant filed a proper person document labeled a "motion for resentencing." On December 16, 2005, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court's sentence was based upon serious inaccuracies in the presentence investigation report and psychological examination. Specifically, he claimed that the report of the psychological examination incorrectly attributed the following statements to appellant: (1) he had used

[1]Grabe v. State, Docket No. 45671 (Order Dismissing Appeal, October 3, 2005).

underage Brazilian prostitutes; (2) he went to Brazil because of corrupt authorities; (3) he was involved with the wrong crowd—other men with pedophilic interests; and (4) he continued to be a danger to the community. Appellant claimed that the report of the psychological examination failed to indicate that: (1) he had not had any pedophilic interests in over ten years; and (2) he had healthy relationships with adults and was currently attracted to adult males. He further claimed that the presentence investigation report improperly set forth: (1) the date of arrest; (2) the amount of credit; (3) his educational background; (4) a statement that appellant refused to answer police questions during the investigation; (5) a statement that appellant had relations with underage prostitutes; (6) a statement that appellant admitted to paying underage prostitutes; (7) a statement that appellant admitted to being a continued danger to the community; and (8) the sentencing range. Appellant claimed that he was not allowed more than a few minutes to review the presentence investigation report prior to sentencing and did not have a chance to review the report of the psychological examination.[2] Appellant sought a new presentence investigation report, new psychological examination and new sentencing hearing.

Because of the nature of the relief sought by appellant, we conclude that appellant's motion should be construed as a motion to modify the sentence. A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal

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[2]Appellant's reliance upon FRCP 32 (setting forth the rule relating to presentence reports in the federal courts) is misplaced. FRCP 32 does not apply to Nevada criminal cases.

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]

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 relied upon any material mistake of fact about his criminal record that worked to his extreme detriment. Appellant failed to demonstrate that any of the challenged information was incorrect, or that it made a difference in the sentencing decision of the district court. Appellant failed to demonstrate that he did not have an adequate opportunity to comment on the alleged misinformation as most of the alleged misinformation was presented during the sentencing hearing.[5] To the extent that some of the alleged misinformation was not presented at sentencing, appellant failed to demonstrate that it had any impact on the sentencing decision. Appellant was presented with the presentence report prior to sentencing; there is no indication that his counsel did not receive the report in a timely fashion. Finally, we note that the report of the psychological examination essentially set forth the points that appellant claimed were not included in the report. Therefore, we affirm the order of the district court.

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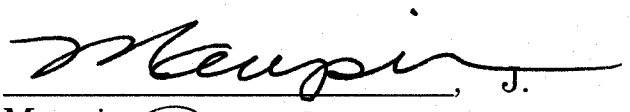
[3]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

[5]Information about appellant's conduct in Brazil, his continued danger to the community, his refusal to answer police questions was referred to during the sentencing hearing. Appellant, thus, had an adequate opportunity to comment on these points.

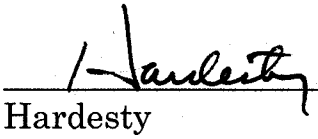
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin

_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Heath Robert Grabe
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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