

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. MANNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46575

MICHAEL A. MANNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46852

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

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

Docket No. 46575 is a proper person appeal from an order of the district court denying a motion to compel specific performance. Docket No. 46852 is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹ Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On November 7, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder. The district court sentenced appellant to serve a term of 60 to 180 months in the Nevada State Prison. The district court entered an amended judgment of conviction on September 8, 2005, to include 100 days of credit for time served. No direct appeal was taken.

¹See NRAP 3(b).

Docket No. 46575

On November 16, 2005, appellant filed a motion to compel specific performance in the district court. On April 3, 2006, the district court denied the motion. This appeal followed.

Appellant claimed that his sentence was based upon mistakes of fact. Specifically, appellant claimed, in his motion and attachments, that the presentence investigation report: (1) included a false statement that he had sent the victim a threatening letter; (2) set forth his attorney's name and appellant's driver's license number incorrectly; (3) set forth that a 1987 prior conviction was a felony and that he had more than one failure to appear; (4) set forth the incorrect year that his probation was reinstated in a prior case; (5) set forth the wrong date for a conviction for possession of a controlled substance and incorrectly set forth that it was a felony; (6) included a domestic violence case that should have been sealed; (7) set forth repetitive offenses in the section on additional crimes in order to enlarge his criminal history; (8) falsely stated that he used aliases, false social security numbers and additional birth places; (9) erroneously included a statement that he had been arrested for fraudulent schemes, resisting arrest and failing to have proof of insurance; (10) contained a confusing statement about his probation adjustment; (11) failed to emphasize that the victim's injuries were not life threatening; (12) failed to set forth that appellant did not make a statement because he was never given an opportunity to fill out the form; (13) failed to set forth as mitigating factors that appellant accepted culpability and showed remorse; (14) erroneously stated that he had failed probation as an aggravating factor; and (15) set forth that the victim suffered financial harm. Appellant claimed that the district court was advised about the

errors by counsel during sentencing, but failed to act to correct the presentence investigation report. Appellant sought a new presentence investigation report and a new sentencing hearing.

Because appellant sought to modify his sentence, appellant's motion was properly construed to be 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."²

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. In denying his motion, the district court noted that the sentence was based upon "the heinousness of the crime and the injury [appellant] caused to a human being." Appellant failed to demonstrate that the district court relied upon a mistake about his criminal record that worked to his extreme detriment. Therefore, we affirm the order of the district court denying appellant's motion.

Docket No. 46852

On November 22, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 26, 2006, the district court dismissed appellant's petition. This appeal followed.

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

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the delay, appellant asserted that he did not have transcripts with which to prepare his petition and he argued that this court's holding in Peterson v. Warden⁵ was unfair in its requirement that an indigent defendant had to show a need for a transcript prepared at state expense. Appellant further claimed that he was exempt from the procedural time bar pursuant to NRS 34.725.

Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁶ Appellant failed to demonstrate that the lack of transcripts prevented him from filing a timely petition. Further, NRS 34.725 was repealed effective January 1, 1993, and thus, it did not provide any exemption for the procedural time bar set forth in NRS 34.726(1).⁷ Therefore, we conclude that the district court did not err in dismissing appellant's petition, and we affirm the order of the district court.

³See NRS 34.726(1).

⁴See id.

⁵87 Nev. 134, 483 P.2d 204 (1971).

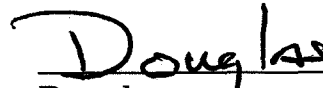
⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

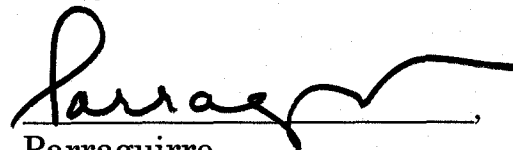
⁷1991 Nev. Stat., ch. 44, § 31, at 92.

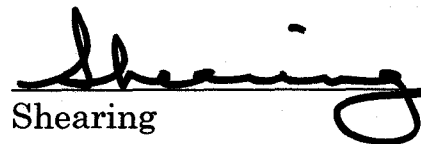
Conclusion

Having reviewed the records 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 judgments of the district court AFFIRMED.⁹


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

cc: Hon. Joseph T. Bonaventure, District Judge
Michael A. Manning
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

⁹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.

The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.