

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEREK A. COSTANTINO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47414

**FILED**

**SEP 20 2006**

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion for sentence modification. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 27, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of twenty-five years in the Nevada State Prison and pay \$3,830.95 in restitution, joint and several liability with any other responsible party. This court dismissed appellant's subsequent appeal from his judgment of conviction.<sup>1</sup> Appellant unsuccessfully sought post-conviction relief by way of three post-conviction petitions for writs of habeas corpus and a motion to correct an illegal sentence.<sup>2</sup>

---

<sup>1</sup>Costantino v. State, Docket No. 28854 (Order Dismissing Appeal, February 26, 1997).

<sup>2</sup>Costantino v. State, Docket No. 45635 (Order of Affirmance, September 26, 2005); Costantino v. State, Docket No. 42609 (Order of Affirmance, August 23, 2004); Costantino v. State, Docket Nos. 30734, 31276 (Orders Dismissing Appeals, December 10, 1999).

On April 26, 2006, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On May 11, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his trial counsel failed to present vital information for the preparation of the presentence investigation report: (1) medical records showing hypoglycemia; (2) employment records; and (3) complete educational history. Appellant claimed that his trial counsel should have also sought to seal or expunge his juvenile records. Appellant claimed that because the Parole Board relies upon the presentence investigation report that he has been harmed that this information was not accurately presented. Finally, he claimed that the imposition of restitution as joint and several liability harms appellant because his co-defendant only paid a small portion of the restitution leaving appellant a greater portion of the restitution to pay.

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."<sup>3</sup> A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>4</sup>

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's claim fell outside the very narrow scope of claims permissible in a motion for

---

<sup>3</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>4</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

sentence modification. Appellant failed to demonstrate that his sentence was based upon any material mistakes of fact about his criminal record—in fact the district court imposed the sentence recommended by the plea agreement. The district court properly imposed restitution.<sup>5</sup> Therefore, we affirm the order of the district court.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Derek A. Costantino  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>5</sup>See NRS 176.033(1)(c).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).