

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL TODD BREWER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47926

**FILED**

DEC 06 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a motion for sentence modification. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On October 17, 2000, the district court convicted appellant, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to serve three consecutive terms of 48 to 120 months in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.<sup>1</sup>

On June 7, 2006, appellant filed a proper person motion for sentence modification in the district court. On August 9, 2006, the district court denied appellant's motion. This appeal followed.

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>2</sup> A motion to modify a

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<sup>1</sup>Brewer v. State, Docket No. 37046 (Order of Affirmance, March 15, 2001).

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

sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>3</sup>

First, appellant claimed that the district court relied upon false information contained in the supplemental PSI when sentencing him. Specifically, appellant claimed that the supplemental PSI incorrectly stated that he had twenty-one arrests, rather than fifteen; he had fifteen convictions, rather than nine; was sentenced to five prison terms, rather than three; he had three paroles and three failures, rather than two paroles and two failures, and he had two probations and two failures, rather than one probation and one failure. Appellant also alleged several other errors, not related to his criminal record, were included in the supplemental PSI.

Appellant failed to demonstrate that the PSI contained false information about his criminal record. Further, even assuming that the PSI contained false information as alleged by appellant, appellant failed to demonstrate that the district court relied upon the false information to his detriment when sentencing him. The record on appeal indicates that when determining appellant's sentence the district court considered appellant's long history of property crimes and specifically mentioned appellant's prior convictions for burglary, uttering a forged instrument, conspiracy to commit unauthorized signing of a credit card sales slip and possession of a forged instrument. Appellant did not assert or demonstrate that any of the convictions the district court relied upon were false. Additionally, appellant failed to object to the information contained in the supplemental PSI at the sentencing hearing. Accordingly, we conclude the district court did not err in denying this claim.

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<sup>3</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

Second, appellant claimed that when sentencing him, the district court improperly relied upon an erroneous report that predicted the total financial harm appellant would have caused if he had not been apprehended. Appellant challenged the district court's consideration of this evidence on direct appeal. This court held that although the report was highly speculative and should not have been offered as evidence, it did not appear that appellant was prejudiced by the district court's consideration of the report because the district court did not mention the report when imposing the sentence. The doctrine of the law of the case prohibits revisitation of this issue and "cannot be avoided by a more detailed and precisely focused argument."<sup>4</sup> Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed that the district court improperly imposed restitution for a loss suffered by the Silver Club. This claim fell outside the narrow scope of claims permitted in a motion for sentence modification. Further, appellant waived this issue by failing to object to the order of restitution at his sentencing hearing and failing to raise any error concerning restitution in his direct appeal. Accordingly, we conclude the district court did not err in denying this claim.

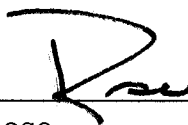
Fourth, appellant claimed that counts one and two were transactionally related, and therefore the sentences for both counts violated double jeopardy. This claim fell outside the narrow scope of claims permitted in a motion for sentence modification. Accordingly, we conclude the district court did not err in denying this claim.

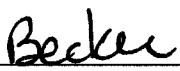
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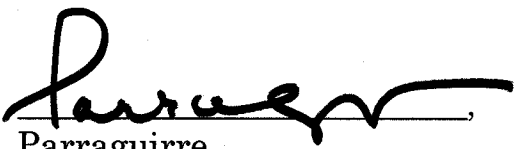
<sup>4</sup>Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Steven P. Elliott, District Judge  
Randall Todd Brewer  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>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.