IN THE SUPREME COURT OF THE STATE OF NEVADA

NARVIEZ V. ALEXANDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48149

FILED

MAR 2 7 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Sally L. Loehrer, Judge.

On January 4, 1995, the district court convicted appellant, pursuant to a guilty plea, of four counts of robbery with the use of a deadly weapon and one count of first degree kidnapping with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 210 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.[1] Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus, motion to correct an illegal sentence, and a petition for a writ of error coram nobis.[2]

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[1]Alexander v. State, Docket No. 26624 (Order Dismissing Appeal, October 22, 1996).

[2]Alexander v. State, Docket No. 46642 (Order of Affirmance, June 12, 2006); Alexander v. State, Docket No. 45385 (Order of Affirmance, September 26, 2005); Alexander v. State, Docket No. 35153 (Order Dismissing Appeal, April 12, 2000); Alexander v. State, Docket No. 29134 (Order of Remand, March 11, 1999) (denying several claims and

*continued on next page . . .*



07-06911

On August 21, 2006, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. Appellant filed a response. On October 6, 2006, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the presentence investigation report contained errors that worked to his detriment. Specifically, appellant identified the following errors: (1) a statement that he had failed probation when in fact he had successfully completed probation as a juvenile offender; (2) information from victim #5 about a crime that was not proven beyond a reasonable doubt nor admitted to by appellant; (3) supplemental information about the overall crime spree that was not proven beyond a reasonable doubt; (4) statement that appellant was an associate of the East Coast Bloods simply because he was in their company during a traffic stop; and (5) statement that he had only resided in Nevada for eleven years when he had lived in Nevada his entire life. Appellant further claimed that his sentence was cruel and unusual punishment because none of the victims were injured or killed. Finally, he claimed that he had numerous accomplishments since being incarcerated, and thus, was deserving of mercy.

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."[3] A motion to modify a

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remanding one claim for an evidentiary hearing—the district court's decision upon remand was reviewed in Docket No. 35153).

[3]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.[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 any of the alleged mistakes were material or that they made a difference in his sentence. Appellant was originally charged with 65 felony counts, and 60 felony counts were dismissed as part of the negotiations. After hearing arguments about the proper sentence in the instant case based upon the facts of the crimes, appellant's record, age and upbringing, the district court stated that it did not believe appellant should ever be on the streets again and imposed a sentence that did not exceed the maximum sentences permitted by statute.[5] The district court noted the emotional trauma inflicted by appellant and his co-defendants during the crimes. As part of the negotiations, the State retained the right to argue all facts and circumstances of the charges set forth in the amended indictment. The plea agreement further informed appellant that the district court would be able to consider "information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement." The plea agreement also informed appellant that the presentence investigation report would inform the judge of the "nature,

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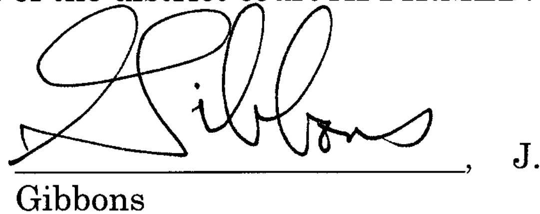
[4]Id. at 708-09 n.2, 918 P.2d at 325 n.2.

[5]See 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (setting forth a penalty of a definite term of not less than five years for first degree kidnapping where no substantial injury to the victim); 1993 Nev. Stat., ch. 142, § 1, at 253 (setting forth a penalty of a definite term of not less than one year nor more than fifteen years); NRS 193.165 (providing for an equal and consecutive sentence of use of a deadly weapon).

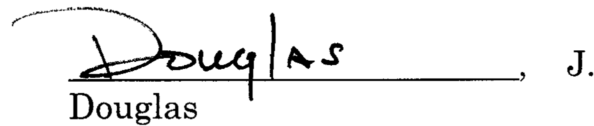
scope and extent of [appellant's] conduct regarding the charges against [appellant] and related matters." Appellant's claim that this sentence amounted to cruel and unusual punishment fell outside the scope of claims permissible in a motion to modify a sentence. Finally, appellant's accomplishments in prison, while commendable, is not a basis for sentence modification.

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

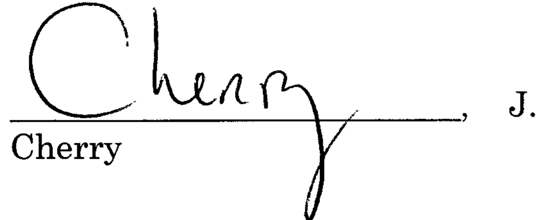
ORDER the judgment of the district court AFFIRMED.[7]



_______________, J.
Gibbons



_______________, J.
Douglas



_______________, J.
Cherry

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

[7]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.

cc: Hon. Sally L. Loehrer, District Judge
Narviez V. Alexander
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk