

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LAWRENCE REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48218

FILED

FEB 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
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; Robert H. Perry, Judge.

On July 7, 1995, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken. Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus.²

On July 14, 2006, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. Appellant filed a reply. On September 20, 2006, the district court denied appellant's motion. This appeal followed.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Reed v. Warden, Docket No. 31786 (Order of Affirmance, January 18, 2001).

In his motion, appellant claimed that errors existed in the presentence investigation report. Appellant further claimed that the parole board, in denying parole in 2004, increased his sentence beyond the ten-year minimum sentence that he was to receive pursuant to the judgment of conviction. Appellant argued that because his minimum parole eligibility was set at ten years that he was required to receive parole after serving ten years. Appellant further noted that he had been programming in prison as directed by the district court at sentencing. Finally, appellant claimed that he was actually innocent.

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 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 mistaken assumption about his criminal record which worked to his extreme detriment at sentencing. Appellant failed to specifically identify any errors in the presentence investigation report. Appellant's claim relating to the parole board is inappropriately raised in a motion for sentence modification as any alleged errors in the parole proceedings do not implicate the validity of the sentence imposed by the district court. Moreover, as a separate and independent ground to deny relief, appellant's challenge to the denial of


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


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

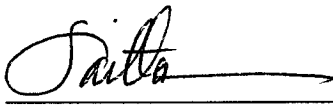
parole is patently without merit. Parole is an act of grace; a prisoner has no constitutional right to parole.⁵ Appellant was not required to receive parole after serving ten years; rather, appellant was eligible to be considered for parole after serving a minimum of ten years. Although appellant's programming in prison is commendable, it does not provide any basis for modification of a sentence. Finally, a claim of actual innocence may not be raised in a motion for sentence modification, but must instead be raised in a post-conviction petition for a writ of habeas corpus.⁶ 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

⁵See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

⁶We express no opinion as to whether appellant may satisfy the procedural requirements of NRS chapter 34.

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Robert H. Perry, District Judge
Robert Lawrence Reed
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk