

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHANNING BERNARD GARDNER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEWART L. BELL, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 49003

FILED

MAR 08 2007

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

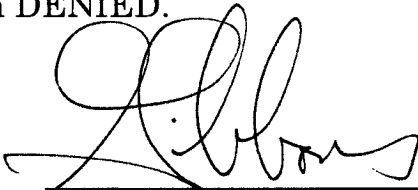
ORDER DENYING PETITION

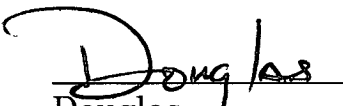
This is a proper person petition for a writ of mandamus. Petitioner challenges the validity of his judgment of conviction and sentence. Specifically, petitioner argues that he should not have been adjudicated a habitual criminal because the prior convictions were stale and trivial and because habitual criminal adjudication does not serve the interests of justice. We have considered the documents filed in this matter, and we conclude that this court's intervention in this matter is not warranted. Generally, a challenge to the validity of the judgment of conviction and sentence must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance.¹

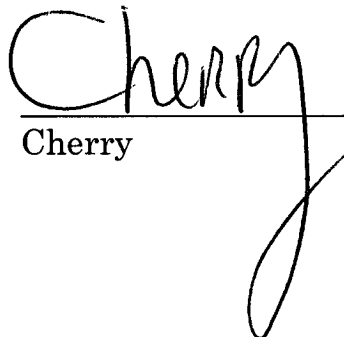
¹See NRS 34.724; NRS 34.738(1). We express no opinion as to whether petitioner can satisfy the procedural requirements of NRS chapter 34.

Petitioner may then appeal to this court from an adverse decision.² A criminal defendant may also file a motion to modify a sentence; the criminal defendant must demonstrate that his sentence was based upon a material mistake of fact about his criminal record that worked to his extreme detriment.³ Accordingly, we

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Stewart L. Bell, District Judge
Channing Bernard Gardner
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

²See NRS 34.575(1).

³See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Again, we express no opinion as to the success of any such motion.