IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JAMES IRWIN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49282

FILED

JUL 2 4 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to vacate, modify and correct sentence. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On October 4, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of offense involving stolen property and one count of stop required on signal of a police officer. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of 60 to 150 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.[1]

On May 13, 2005, appellant filed a proper person motion to vacate, modify and correct sentence in the district court. The district court denied the motion. On appeal, this court determined that appellant did not have a qualifying number of prior convictions for habitual criminal adjudication, reversed the district court's decision and remanded for a new

[1]Irwin, Jr. v. State, Docket No. 34937 (Order Dismissing Appeal, September 8, 2000).

sentencing hearing in the district court.[2] On remand, the district court conducted a new sentencing hearing and sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison. On March 17, 2006, the district court entered an amended judgment of conviction memorializing its sentencing decision and awarded appellant with 2,474 days of credit for time served. No appeal was taken from the amended judgment of conviction.

On March 21, 2007, appellant filed a proper person motion to vacate, modify and correct sentence in the district court. On March 23, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant essentially challenged the sufficiency of the evidence adduced at trial. Specifically, appellant claimed that the value of the property was not properly established to be more than $250 because testimony was not provided from the true owner of the property, and therefore, the stolen property count should have been dismissed. Appellant further claimed that there was no proof of property damage or injury to others during the police chase, and thus, he should only have been convicted of a misdemeanor for failing to stop on signal of a police officer.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.[3] "A motion to correct an illegal sentence

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[2]Irwin, Jr. v. State, Docket No. 45420 (Order of Reversal and Remand, December 23, 2005).

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

'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"[4] 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."[5]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentences were facially legal, and there is no indication that the district court was without jurisdiction in this matter.[6] Appellant further failed to demonstrate that the district court relied upon any material mistake about his criminal record that worked to his extreme detriment.

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[4]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[5]Id.

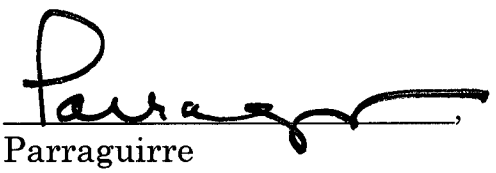
[6]See NRS 205.275(2)(b) (providing that possession of stolen property with a value greater than $250 but less than $2,500 is a category C felony); NRS 193.130(2)(c) (providing for a term of not less than 1 year nor more than 5 years for a category C felony); NRS 484.348(3)(b) (providing for a term of not less than 1 year nor more than 6 years when a defendant fails to stop on signal of a police officer and operates the vehicle in a manner which endangers or is likely to endanger other persons or the property of other persons).

The evidence adduced at trial established that the value of the stolen ATV was $750. Further, the evidence adduced at trial established that appellant failed to stop on the signal of a police officer in a manner that was likely to endanger others or the property of others as he led the police on an approximately 23 minute chase through the desert, residential areas and busy streets causing people and vehicles to move out of the way during the chase. In fact, according to the testimony of the police, appellant drove through the yards of other people and came within 5 to 6 feet of at least one residence during the chase.

Appellant may not challenge the sufficiency of the evidence in a motion to correct or modify a sentence. Therefore, we affirm the order of the district court on appeal.

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.[8]



_____, J.
Parraguirre

_____, J.
Hardesty

_____, J.
Saitta

cc: Hon. John P. Davis, District Judge
William James Irwin Jr.
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

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

[8]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.