

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN K. POLLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49494

FILED

JUL 24 2007

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is a proper person appeal from an order of the district court denying a motion to correct, modify or vacate sentence, petition for amended presentence report, motion to suppress criminal complaint, motion for appointment of outside counsel and a purported decision denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

On April 5, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted theft. The district court sentenced appellant to serve a term of eighteen to forty-eight months in the Nevada State Prison. No direct appeal was taken.

On June 6, 2006, appellant filed a proper person motion to modify a sentence. The State opposed the motion. On July 28, 2006, the district court denied the motion. No appeal was taken.

On August 8, 2006, appellant filed a proper person motion to suppress criminal complaint. The State opposed the motion. On September 1, 2006, the district court denied the motion. No appeal was taken.

On April 12, 2007, appellant filed a proper person motion to correct, modify or vacate sentence in the district court. On that same date,

appellant also filed a petition for an amended presentence report, motion to suppress criminal complaint, motion to appoint outside counsel and a post-conviction petition for a writ of habeas corpus. On April 24, 2007, appellant filed a post-conviction petition for a writ of habeas corpus and a petition for an amended presentence report identical to the first petitions. The State filed an opposition. On May 11, 2007, the district court denied appellant's motion to correct, modify or vacate sentence, petition for amended presentence report, motion to suppress criminal complaint, and motion for appointment of outside counsel. This appeal followed.¹

Preliminarily, we note that the district court had not made a decision, oral or written, on appellant's post-conviction petition for a writ of habeas corpus at the time that appellant filed his notice of appeal. Thus, this portion of the appeal was premature. Appellant may file a timely appeal from a final, written order denying his petition.² This court lacks jurisdiction over this portion of the appeal, and thus, we dismiss the appeal in part.

Next, to the extent that appellant appealed the order of the district court denying appellant's petition for amended presentence report, motion to suppress criminal complaint, motion for appointment of outside

¹We note that on August 14, 2006, appellant also filed a nearly identical motion to correct, modify or correct an illegal sentence. The district court orally denied that motion on August 28, 2006. However, it does not appear a written order was ever entered denying that motion. In view of the fact that this motion was nearly identical, this court will treat this appeal as also involving the denial of the motion as filed on August 14, 2006.

²See NRS 34.575(1).

counsel, this court lacks jurisdiction over this portion of the appeal as no statute or court rule provides for an appeal from an order denying the aforementioned petition and motions.³ Therefore, we dismiss this portion of the appeal.

In his motion to correct, modify or vacate sentence, appellant contended that he failed to interview with the preparer of the presentence report as no one informed him that he needed to submit to the interview. He further claimed that there was incorrect information in the presentence report, particularly regarding his past criminal history.

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.⁴ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁵ 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."⁶

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was

³See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

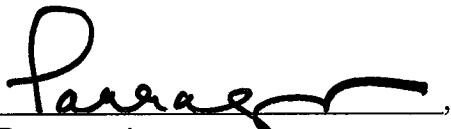
⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

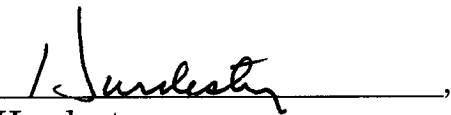
⁶Id.


facially legal, and there is no indication that the district court was without jurisdiction in the matter.⁷ Appellant failed to specifically identify any incorrect information in the presentence report, and thus, he failed to demonstrate that the district court relied upon any material mistakes about his criminal record that worked to his extreme detriment. Therefore, we affirm that portion of the district court's order denying appellant's motion to correct, modify or vacate sentence.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED in part and we DISMISS the appeal in part.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁷See NRS 205.0835(3); NRS 193.330(1)(a)(4); NRS 193.130(2)(d).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. James M. Bixler, District Judge
Kevin K. Pollard
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk