

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH DUANE HORNE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49576

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On December 3, 2003, the district court convicted appellant, pursuant to a guilty plea, of robbery. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010, and sentenced him to serve a term of 60 to 150 months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 7, 2007, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On June 8, 2007, the district court denied appellant's motion. This appeal followed.

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.¹ "A motion to correct an illegal sentence

¹Edwards 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.'"² 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 correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁴

First, appellant contended his sentence should be modified because his presentence investigation report contained several errors that the district court declined to correct and these errors worked to his detriment at his sentencing hearing. Appellant failed to demonstrate that the district court based its sentence on mistaken assumptions in his criminal record which worked to his extreme detriment.⁵ Significantly, appellant's guilty plea agreement indicates that he did not oppose being sentenced as a habitual criminal. Moreover, appellant brought the alleged errors contained in his presentence report to the attention of the district court. Initially, the State did not have appellant's prior judgments of conviction and the district court indicated that it was unwilling to adjudicate appellant a habitual criminal on the basis of the presentence report. Subsequently, however, the State obtained and entered three

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

³Id. at 708, 918 P.2d at 324.

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

⁵Id. at 708, 918 P.2d at 324.

certified prior judgments of conviction into the record during appellant's sentencing hearing. The district court made it very clear that it was basing its adjudication of appellant as a habitual criminal upon the three certified copies of appellant's prior convictions. The district court noted that because the State had entered the certified judgments of convictions it was no longer willing to set aside appellant's agreement not to oppose being sentenced under the small habitual criminal statute. Thus, appellant failed to demonstrate that the district court inappropriately relied upon his presentence report to his extreme detriment when it sentenced him. Therefore, the district court did not err in denying appellant's claim.

Second, appellant claimed that the district court erroneously adjudicated and sentenced him as a habitual criminal because the district court failed to "pronounce a finding of habitual criminal based upon the record of the accused; nor did the court base such a finding upon the certified copies of judgments of conviction." As noted above, the district court made it very plain that it was basing its adjudication of appellant as a habitual criminal upon the three certified copies of appellant's prior convictions. Therefore, this claim is without merit as it was belied by the record.⁶

Third, appellant claimed that the district court erred when it failed to indicate whether appellant's sentence of 60 to 150 months was imposed as to the robbery itself or as an enhancement under the habitual criminal statute. This claim is outside the scope of claims permissible in a

⁶See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

motion to correct or modify an illegal sentence.⁷ Moreover, as a separate and independent ground to deny relief this claim was without merit. The judgment of conviction clearly indicates that the district court adjudicated appellant guilty of robbery pursuant to NRS 200.380 and adjudicated appellant a habitual criminal pursuant to NRS 207.010. Pursuant to that statute, appellant was sentenced as a small habitual criminal, as he agreed in his guilty plea, to serve a term of 60 to 150 months; a term well within the prescribed sentence of 60 to 240 months. Appellant's sentence was facially legal,⁸ and the record does not support an argument that the district court was without jurisdiction in this matter. Therefore, the district court did not err in denying appellant's claim.

Finally, appellant contended that the district court erred when it failed to indicate under which statute the district court imposed his sentence. This claim is outside the scope of claims permissible in a motion to correct an illegal sentence.⁹ Moreover, as a separate and independent ground to deny relief this claim was without merit. As discussed above, the judgment of conviction clearly indicates that appellant was sentenced pursuant to the habitual criminal statute. Therefore, the district court did not err in denying appellant's claim.

⁷Edwards, 112 Nev. at 708, 918 P.2d at 324.

⁸NRS 207.010; NRS 200.380.

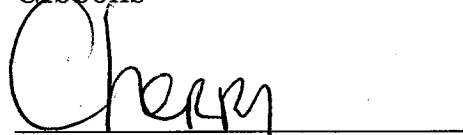
⁹Edwards, 112 Nev. at 708, 918 P.2d at 324.

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.¹⁰ Accordingly, we

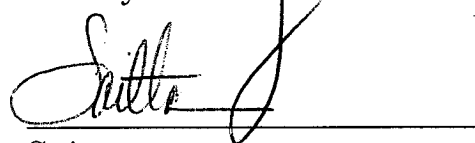
ORDER the judgment of the district court AFFIRMED.¹¹

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Lee A. Gates, District Judge
Kenneth Duane Horne
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We 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.