

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS FICO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49630

FILED

OCT 11 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 for sentence modification. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of two counts of theft.¹ The district court sentenced appellant to serve two consecutive terms of 19 to 60 months in the Nevada State Prison. The district court ordered appellant's sentence on Count 1 to run consecutively with appellant's sentences in district court case numbers C172958, C186605, and C218645. The district court ordered appellant's sentence on Count 2 to run consecutively with Count 1 and appellant's sentences in district court case numbers C172958, C186605, C218645. The district court ordered Counts 1 and 2 to run concurrently with appellant's sentence in district court case number C214040. No direct appeal was taken.

¹On October 11, 2006, the district court entered an amended judgment of conviction granting appellant's motion for additional credit for time served and giving appellant 135 days credit for time served.

On April 18, 2007, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On May 21, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court's sentence should be modified because the district court inappropriately relied upon errors in the presentence report when determining appellant's sentence. Appellant claimed that the district court was erroneously informed that he had four prior felony convictions when in fact he had none. Appellant argued that this mistaken assumption about his prior convictions worked to his extreme detriment.

Appellant also appeared to claim that the district court misunderstood his sentence in district court case number C21404, where the district court ordered his sentence to run concurrently with appellant's sentences in district court case numbers C186605, C172958 and C214039. Appellant appeared to argue that because the district court was confused, it ordered his sentence to run consecutively to his sentences in district court case numbers C172598, C186605, and C218645 but concurrently to his sentence in district court case number C21404, thereby creating a complex and confusing sentence structure. Appellant argued that his sentence should be modified in order to simplify the complexity of his sentence.

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."² A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.³

Our review of the record on appeal reveals that appellant's claims are without merit. First, the presentence report indicated that appellant had four prior convictions when the district court sentenced appellant in the instant case. At the sentencing hearing, appellant explained to the district court that three of these four convictions were part of a global negotiation which included the instant case along with the convictions listed in the presentence report and the remaining conviction was a probation revocation case. Therefore, contrary to appellant's assertion otherwise, the district court did not maintain any "mistaken assumptions" about the nature of appellant's prior convictions when it sentenced him. As a result, appellant failed to demonstrate that his sentence was based on mistaken assumptions in his record that worked to his extreme detriment.⁴

Second, appellant failed to demonstrate that the district court erred when it ordered his sentence to run consecutive to his sentences in district court case numbers C172598, C186605 and C218645 and concurrent to his sentence in district court case number C21404. The record clearly demonstrates that the district court was informed that in district court case number C21404 the district court ordered his sentence

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

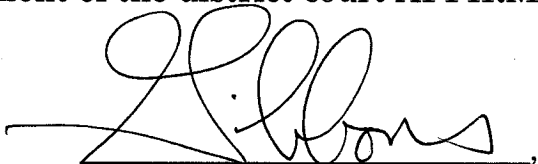
³Id. at 708-09 n.2, 918 P.2d at 325 n.2.

⁴Id. at 708, 918 P.2d at 324.

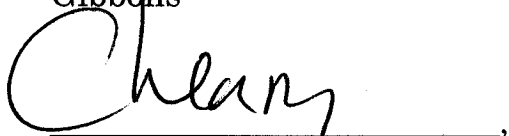
to run concurrently with appellant's sentences in district court case numbers C186605, C172958 and C214039. That information notwithstanding, the district court determined that his sentences in the instant case should run consecutively with district court case numbers C172598, C186605, and C218645 and concurrent to his sentence in district court case number C21404. The district court has the discretion to impose concurrent or consecutive sentences.⁵ Appellant failed to show that the district court relied on any mistaken assumptions when making its determination. As a result, the district court did not err in denying appellant's motion.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

⁵NRS 176.035(1).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jennifer Togliatti, District Judge
Thomas Fico
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk