

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK A. WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49664

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 modify a sentence based on an untrue fact or facts. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On October 20, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with a deadly weapon. The district court sentenced appellant to serve a term of four to ten years in the Nevada State Prison. No direct appeal was taken.

On June 1, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion and the district court denied appellant's motion. On appeal, this court affirmed the district court's denial of appellant's motion.¹

On May 2, 2007, appellant filed a proper person motion to modify a sentence based on an untrue fact or facts in the district court.

¹Washington v. State, Docket No. 47608 (Order of Affirmance, October 10, 2006).

The State opposed the motion. On August 1, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the court relied on untrue information which caused the district court to sentence him harshly. Specifically, appellant claimed that the district court improperly relied on the victim's false testimony regarding the facts of the crime. Appellant claimed that the victim's recantation was "unrefutable [sic] evidence" that the court's sentence was excessive because it was based on materially untrue assumptions or mistakes of fact. Appellant also intimated that the fact that the victim visited him in California after the incident, stayed with him in a motel, and engaged in sexual intercourse with him also proved that the victim's allegations regarding the battery were false.

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

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court relied upon a mistaken assumption in his criminal record that worked to his extreme detriment.

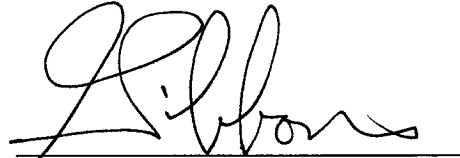
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

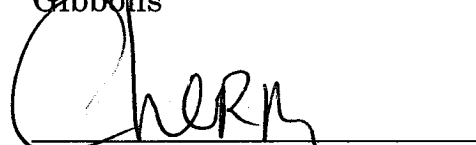
³Id. at 708-09 n.2, 918 P.2d at 325 n.2.


Significantly, appellant entered a guilty plea to the offense of battery with the use of a deadly weapon. Because appellant pleaded guilty to battery with the use of a deadly weapon it is unlikely that the victim's testimony regarding the battery worked to his extreme detriment at sentencing. Moreover, appellant failed to demonstrate that the victim's testimony regarding the battery was false. The victim testified at appellant's sentencing hearing and admitted that she had recanted in a letter she wrote in the presence of appellant and his brother outside the office of appellant's trial counsel. The victim testified that she recanted because she was afraid of appellant and also because she thought she still loved him. The victim testified that her recantation was a lie and that she told the police a true and accurate account of the crime. The victim testified further that she did visit appellant in California after the battery and that she and appellant had stayed in a motel together and engaged in sexual intercourse. The district court was therefore well aware that the victim had recanted and visited appellant after the battery and had the discretion to reach its own conclusions about this testimony in regard to sentencing, especially in light of appellant's guilty plea. Therefore, appellant failed to demonstrate that the district court relied on materially untrue assumptions which worked to his extreme detriment when it sentenced appellant. Thus, 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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Sally L. Loehrer, District Judge
Mark A. Washington
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).