

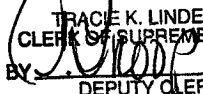
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49879

FILED

JAN 18 2008

TRACIE K. LINDEMAN
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 “modification of an illegal sentence.” Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On January 25, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny (category B felony). 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 November 21, 2006, appellant filed a proper person motion for “modification of an illegal sentence.” The State opposed the motion, and appellant filed a response. On July 6, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he should have been convicted of a category C level felony and not a category B level felony. Appellant argued that because the amount of the items stolen did not

exceed \$2,500, the appropriate sentence was a term of one to five years—the punishment for category C felony.¹ Appellant further suggested that his stipulation to the value of the property was coerced and his plea was not voluntarily entered.

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.² "A motion to correct an illegal sentence

¹NRS 205.222, in pertinent part, sets forth the following penalties for grand larceny:

(2) If the value of the property involved in the grand larceny is less than \$2,500, the person who committed the grand larceny is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(3) If the value of the property involved in the grand larceny is \$2,500 or more, the person who committed the grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

NRS 193.130(2)(c) provides for a penalty of not less than 1 year and not more than 5 years for a category C felony.

²Edwards 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.'"³ 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."⁴ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁵

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal, and there is no indication that the district court was without jurisdiction in this matter.⁶ Appellant further failed to demonstrate that his sentence was based upon a material mistake about his criminal record that worked to his extreme detriment. Appellant entered a guilty plea to a category B level grand larceny, and appellant may not challenge the validity of his guilty plea in his motion to correct and/or modify his sentence.

³Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

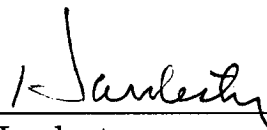
⁴Id.

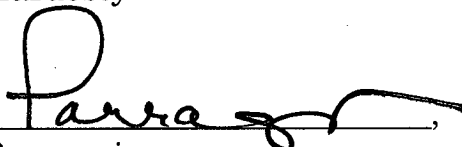
⁵Id. at 708-09 n.2, 918 P.2d at 325 n.2.

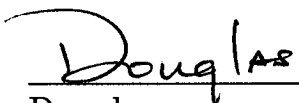
⁶See NRS 205.222(3).

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.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Michael Lee Johnson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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