

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50029

FILED

APR 22 2008

TRACIE K. LINDEMAN
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 a motion for sentence modification. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary, two counts of burglary, one count of attempted burglary, and one count of possession of burglary tools. The district court sentenced appellant as a habitual criminal for the three felony counts and sentenced appellant to serve three consecutive terms of 60 to 190 months in the Nevada State Prison and concurrent terms of one year each for the remaining counts.¹ This court dismissed appellant's appeal from his judgment of conviction.² The remittitur issued on October 17, 2000. Appellant unsuccessfully

¹On July 18, 2001, the district court entered an amended judgment of conviction referencing the habitual criminal statute.

²Beverly, Jr. v. State, Docket No. 35526 (Order Dismissing Appeal, September 21, 2000).

sought relief in a post-conviction petition for a writ of habeas corpus, several motions to correct an illegal sentence, and a motion to modify sentence.³

On June 26, 2007, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On July 25, 2007, the district court denied appellant's motion. This appeal followed.

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 modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁵

In his motion, appellant first claimed that his convictions violated double jeopardy. This claim fell outside the very narrow scope of claims permissible in a motion to modify. Therefore, the district court did not err in denying this claim.

Appellant also claimed that the district court relied upon false information about his criminal record as follows: (1) the presentence investigation report [PSI] stated that appellant had seven felony

³Beverly v. State, Docket No. 48462 (Order of Affirmance, May 14, 2007); Beverly v. State, Docket No. 47002 (Order of Affirmance, July 19, 2006); Beverly v. State, Docket No. 46547 (Order of Affirmance, March 27, 2006); Beverly v. State, Docket No. 45547 (Order of Affirmance, September 16, 2005); Beverly v. State, Docket No. 38267 (Order of Affirmance, August 21, 2002).

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

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

convictions when he only had five felony convictions; (2) the PSI stated appellant had nine misdemeanor convictions when he only had six misdemeanor convictions; (3) the PSI stated that appellant had seven prison terms when he only had five prior prison terms; (4) the PSI stated that appellant had six prior jail terms when he only had three prior jail terms; (5) appellant's June 18, 1984, conviction for burglary was "double counted"; (6) appellant's June 18, 1984, felony conviction, October 18, 1985, misdemeanor conviction, September 10, 1985, misdemeanor conviction, February 17, 1987, felony conviction, and December 21, 1990, felony conviction were stale; (7) appellant's October 18, 1985, September 10, 1985, and September 27, 1988, and June 23, 1998, convictions were misdemeanors even though he was originally charged with felonies; (8) the PSI, the State's sentencing memorandum, and third amended information incorrectly indicated that appellant was convicted of three felonies on February 17, 1987, when appellant was only convicted of two felonies, for which he received concurrent sentences; (9) appellant's September 27, 1988, felony conviction for taking a vehicle without the owner's consent was consolidated with another felony case and thus constituted a single felony; (10) appellant's December 21, 1990, burglary conviction only resulted in one felony conviction despite the fact that appellant had been charged with other crimes; (11) the third amended information incorrectly stated that appellant had been convicted of grand theft auto in 1987; (12) appellant's felony conviction for harboring a criminal was not supported by a judgment of conviction; (13) appellant's conviction in California case number C63151 does not indicate if it is a felony and is otherwise redundant; (14) appellant's conviction in California case number C55845

was a gross misdemeanor and not a felony; and (15) California case number C54203 is redundant with case number C55845.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court relied upon any material mistakes about his criminal record that worked to his extreme detriment. The record on appeal indicates that the State offered and the district court considered six prior convictions for appellant when adjudicating appellant a habitual criminal. Appellant even conceded, in his motion, that he had five prior felony convictions. This was sufficient to support appellant's habitual criminal adjudication.⁶ Any errors in the third amended information concerning when appellant received certain convictions and the specific crimes for which he was convicted were not prejudicial. In addition, the mere fact that the district courts consolidated cases involving appellant's prior felonies or ran sentences concurrently, did not alter the number of felony crimes for which appellant had been convicted. Further, NRS 207.010 makes no allowance for stale prior convictions.⁷ Appellant failed to demonstrate that a correction of any of the further alleged errors set forth above would have made a difference in the outcome of the sentencing hearing. Further, any challenge to the habitual criminal

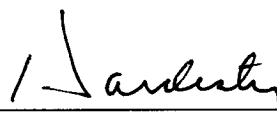
⁶See NRS 207.010(1)(a) (providing that small habitual criminal treatment requires proof of only two prior felony convictions).

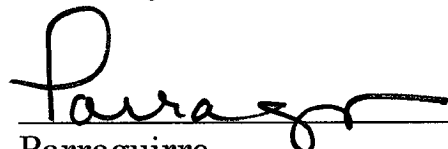
⁷See NRS 207.010; *McGervey v. State*, 114 Nev. 460, 467, 958 P.2d 1203, 1208 (1998) (holding that the district court did not abuse its discretion in adjudicating a defendant a habitual criminal where the defendant contended that his prior convictions were stale).


proceedings was improperly raised in the instant motion as any challenge to the proceedings should have been raised on direct appeal. Therefore, we affirm the order of the district court.

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.⁹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

⁹We 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.

cc: Hon. Lee A. Gates, District Judge
Lloyd Steven Beverly Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk