

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH SCHNEIDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50037

**FILED**

FEB 26 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to correct or modify an illegal sentence and for the appointment of counsel. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On January 28, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of false imprisonment, one count of battery with the use of a deadly weapon, and one count of battery causing substantial bodily harm. The district court sentenced appellant to serve the following terms in the Nevada State Prison: 35 to 156 months for robbery and a consecutive equal term for use of a deadly weapon; a concurrent one-year jail term for false imprisonment; a consecutive term of 38 to 95 months for the first battery count; and a concurrent term of 12 to 48 months for the second battery. This court dismissed appellant's direct appeal.<sup>1</sup> The remittitur issued on June 25, 1997.

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<sup>1</sup>Schneider v. State, Docket No. 30037 (Order Dismissing Appeal, June 6, 1997).

On November 23, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, which the district court denied. On appeal, this court affirmed the order of the district court.<sup>2</sup>

On September 5, 2006, appellant filed a proper person motion to correct an illegal sentence in the district court. Appellant also filed a motion for counsel or to produce the prisoner. On July 19, 2007, the district court denied appellant's motion. This appeal followed.<sup>3</sup>

In his motion, appellant contended that his presentence report was incorrect because it omitted pertinent material and because it contained errors, which appellant contended could have been corrected had the Department of Probation and Parole properly investigated the facts relating to appellant and this case.

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.<sup>4</sup> “A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition

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<sup>2</sup>Schneider v. State, Docket No. 46813 (Order of Affirmance, July 10, 2006).

<sup>3</sup>To the extent that appellant challenges the district court's denial of appellant's motion for request of appointment of counsel or order to produce or transport appellant for hearing, we conclude that the district court did not abuse its discretion in denying these motions.

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

of sentence.”<sup>5</sup> 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.”<sup>6</sup> A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>7</sup>

Our review of the record on appeal reveals that appellant's claims lacked merit. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal<sup>8</sup> and appellant failed to demonstrate that the district court lacked jurisdiction in this matter. Furthermore, appellant failed to demonstrate that the district court relied on any mistaken assumption of fact regarding his criminal record when it sentenced appellant. Appellant failed to demonstrate that the presentence report contained any errors. Moreover, appellant failed to show that the district court relied upon any alleged errors in the presentence report, which purportedly conflicted with the testimony presented at trial. Therefore, the district court did not err in denying appellant's motion.

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<sup>5</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

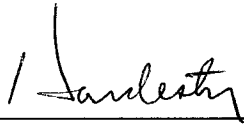
<sup>6</sup>Id.

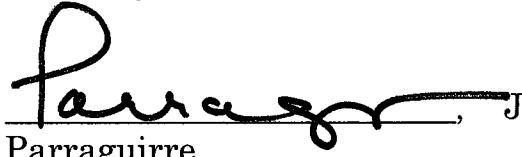
<sup>7</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.


<sup>8</sup>NRS 200.380; 1995 Nev. Stat., ch. 455 § 1 at 1431 (NRS 193.165); 1995 Nev. Rev. Stat., ch. 443, § 66, at 1190 (NRS 200.460); 1995 Nev. Rev. Stat., ch. 23, § 2, at 22, ch. 359, § 6, at 903, ch. 443, § 69, at 1191, ch. 443, § 375, at 1321, ch. 443, § 387, at 1335-37 (NRS 200.481).

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Steven R. Kosach, District Judge  
Ralph Schneider  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).