

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL WAGEN COURSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50529

FILED

FEB 29 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. Third Judicial District Court, Churchill County; David A. Huff, Judge.

On November 4, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of theft. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. The district court ordered this sentence to be served consecutively to another district court case. No credit for time served was provided. No direct appeal was taken.

On December 2, 2005, appellant filed a motion to vacate judgment seeking over 400 days of credit for time served. On December 13, 2005, appellant filed a post-conviction petition for a writ of habeas corpus also seeking over 400 days of credit for time served. The district

court denied the motion and petition, and this court affirmed the district court's orders on appeal.¹

On July 2, 2007, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion, and appellant filed a response. On October 23, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his sentence should be reduced by 400 days to compensate for the fact that he was not awarded credit for time served in the instant case. Appellant claimed that he was promised that he would receive credit for time served in the instant case. In his response, appellant further appeared to claim that the State breached the plea agreement in concurring with the Department of Parole and Probation's recommendation for consecutive sentences because the State had allegedly agreed to not oppose concurrent time between the cases.

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

¹Coursey v. State, Docket No. 46851 (Order of Affirmance, September 25, 2006).

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.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. First, appellant's claims fell outside the scope of claims permissible in a motion for sentence modification; appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Moreover, in the first post-conviction appeal, this court rejected appellant's claim for 400 days of credit for time served because appellant was on parole when he committed the offense in the instant case.⁴ The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided a more detailed and precisely focused argument.⁵ Therefore, we affirm the order of the district court denying appellant's motion.

On February 11, 2008, the State filed a motion to dismiss this appeal because the appeal is frivolous as the claim for credits had been previously decided against appellant. On February 13, 2008, this court received an answering brief in this matter.⁶ In light of this court's disposition, we deny the motion to dismiss as moot and decline to file the answering brief.

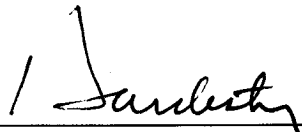
⁴See NRS 176.055(2).

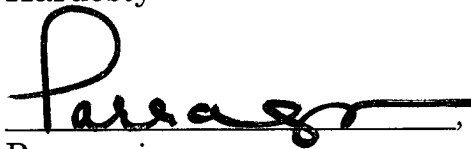
⁵See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

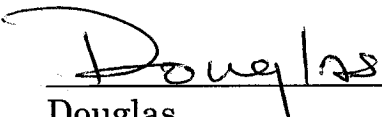
⁶Notably, no briefing has been requested or permitted in this matter at this time.

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.⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. David A. Huff, District Judge
Darrell Wagen Coursey
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk

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

⁸We 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.