

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE SIMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50601

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 to have the sentence reduced. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On May 19, 2005, the district court convicted appellant, pursuant to a guilty plea, of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a term of 60 to 180 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed 5 years. On September 26, 2006, the district court entered an order revoking probation, executing the original sentence, and providing appellant with 170 days of credit for time served. This court affirmed the order of the district court revoking appellant's probation.¹ Appellant unsuccessfully sought relief from his judgment of conviction and sentence

¹Sims v. State, Docket No. 48150 (Order of Affirmance, January 9, 2007).

by way of a post-conviction petition for a writ of habeas corpus and a motion to correct an illegal sentence.²

On November 5, 2007, appellant filed a proper person motion to have his sentence reduced in the district court. The State opposed the motion. On November 29, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district attorney had promised a term of one to three years. Appellant further claimed that the guilty plea agreements were switched and that he had not signed the guilty plea agreement in the instant case. Appellant sought to modify his sentence.

Because of the nature of the relief sought, we conclude that appellant's motion is properly construed to be a motion to modify the sentence. 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."³ A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.⁴

Our review of the record on appeal reveals that the district court did not err in denying appellants' motion. Appellant's claim fell outside of the scope of claims permissible in a motion to modify the

²Sims v. State, Docket Nos. 49710, 49899 (Order of Affirmance, October 29, 2007).

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

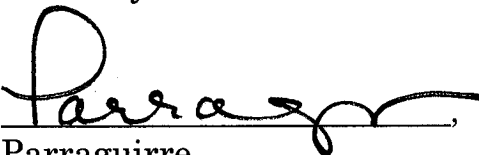
⁴Id. at 708-09 n.2, 918 P.2d at 325 n.2.

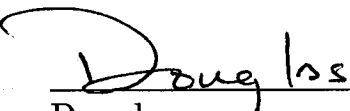
sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption of fact about appellant's criminal record that worked to his extreme detriment. Further, appellant's claim that he had not signed the guilty plea agreement is belied by the record on appeal.⁵

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁵See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We 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. Jackie Glass, District Judge
Wayne Sims
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk