IN THE SUPREME COURT OF THE STATE OF NEVADA

GONZALO INZUNZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50705

FILED

JUN 09 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 reconsideration of sentence." Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On June 15, 2007, the district court convicted appellant, pursuant to a guilty plea, of conspiracy to commit robbery and robbery. The district court sentenced appellant to serve in the Nevada State Prison a term of 12 to 36 months for the conspiracy count and a consecutive term of 24 to 84 months for the robbery count. The district court provided appellant with 79 days of credit for time served. No direct appeal was taken.

On November 1, 2007, appellant filed a proper person "motion for reconsideration of sentence" in the district court. On November 30. 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court relied upon materially untrue assumptions when it sentenced appellant. Specifically, appellant claimed that the district court relied upon a failure to appear in the justice court to sentence him to prison terms. Appellant claimed that the failure to appear was not his fault as he had been

deported by the federal government (United States Immigration and Customs Enforcement) and taken into custody when he attempted to cross the border for his hearing date. Appellant further claimed that he was not granted sufficient credit as he was not provided credit for time spent in the federal holding center prior to his deportation and after his arrest crossing the border. Appellant requested that he be granted probationary terms or concurrent terms of imprisonment.

Because of the nature of the relief sought, we conclude that appellant's motion was properly construed as a motion to modify a 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."[1] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[2]

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant failed to demonstrate that the district court relied upon any mistakes of fact about his record that worked to his extreme detriment. The Department of Parole and Probation (the Department) prepared a presentence investigation report and recommended a term of imprisonment. The Department specifically concluded that appellant was not suitable for community supervision given the crime, his sporadic employment and the possibility of his

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

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

deportation due to being an illegal alien.[3] There is no indication in the record that the district court relied upon appellant's prior failure to appear in fashioning a sentence. A claim for presentence credit should be raised in a post-conviction petition for a writ of habeas corpus in compliance with the procedural rules set forth in NRS chapter 34.[4] 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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

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[3]See Ruvalcaba v. State, 122 Nev. 961, 143 P.3d 468 (2006).

[4]See NRS 34.724(2)(c); Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006).

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

cc: Hon. Jackie Glass, District Judge
Gonzalo Inzunza
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk