IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN PAUL SPEIDEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50931

FILED

AUG 04 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 vacate or modify a sentence. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On November 17, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 8 to 20 years in the Nevada State Prison. No direct appeal was taken.

On November 9, 2007, appellant filed a proper person document labeled "motion to vacate or modify sentence" in the district court. The State opposed the motion. On December 18, 2007, the district court denied appellant's motion. This appeal followed.

Preliminarily, we note that appellant may not challenge the validity of a judgment of a conviction by way of a "motion to vacate." NRS 34.724(2)(b) provides a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them." There is no statute authorizing a "motion to vacate conviction," and presently, this court's case law does not recognize such a motion as

incidental to the trial proceedings.[1] Thus, we conclude that appellant's motion is properly construed as a motion to correct an illegal sentence or motion to modify a sentence based on narrow due process grounds.

In his motion, appellant contended that the habitual criminal enhancement was improper. Appellant claimed that his stipulation to small habitual criminal treatment was not knowingly entered as he was not aware of the provisions of NRS 207.010, the right to have hearing on the prior convictions, the State's burden of proof, and the types of prior offenses that could be relied upon. Appellant further claimed that the district court failed to fulfill its duty to determine the validity of the prior convictions. Finally, appellant claimed that three Nevada convictions (C222312, 05F09467X, and 06F10492X) should not have been relied upon as they were part of the global plea negotiations in this case and that two Florida convictions should not have been relied upon as they were remote in time and involved non-violent offenses.

A motion to vacate or 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.[2] "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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[1]See NRS 34.724(2)(a) (recognizing that a post-conviction petition for a writ of habeas corpus is not a substitute for remedies incidental to the trial court proceedings); Hart v. State, 116 Nev. 558, 562-63 and n.4, 1 P.3d 969, 971-72 and n.4 (2000) (recognizing as incidental to the proceedings a motion to withdraw the guilty plea, a motion to modify a sentence based on narrow due process grounds, a motion to correct a facially illegal sentence and a motion for a new trial).

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

of sentence.'"[3] 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 correct or modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[5]

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant may not challenge the validity of his guilty plea in a motion to vacate, correct or modify the sentence. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction.[6] Appellant further failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. The record does not support appellant's assertion that the district court relied upon the convictions that were part of the global negotiations in adjudicating him a habitual criminal. The record on appeal contains certified copies of three convictions that would qualify as prior convictions for small habitual criminal treatment;[7] thus, appellant had a sufficient number of prior convictions for small habitual

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[3]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[4]Edwards, 112 Nev. at 708, 918 P.2d at 324.

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

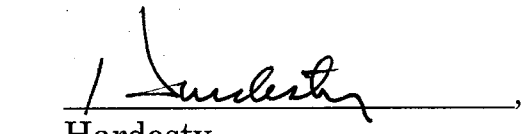
[6]NRS 207.010(1)(a).

[7]The exhibits containing the prior convictions were: (1) a 1998 Nevada conviction for attempted robbery in C147940; (2) a 1991 Florida conviction for aggravated burglary in 91-11149-CF-A; and (3) a 1992 Florida conviction for burglary in 92-10935-CF-A.

criminal treatment.[8] Additionally, NRS 207.010 makes no specific allowance for stale or trivial prior felony convictions.[9] 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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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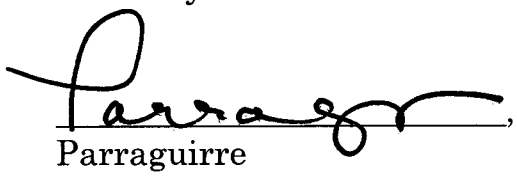

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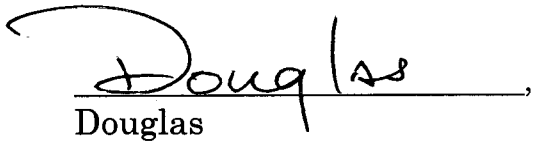
Parraguirre



_____, J.
Douglas

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[8]NRS 207.010(1)(a)(providing that a person convicted of a felony "who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or this State would amount to a felony . . . is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years").

[9]Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996).

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

cc: Hon. Sally L. Loehrer, District Judge
Steven Paul Speidel
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk