

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD THOMAS HUNT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51054

**FILED**

MAR 05 2009

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Leonard Thomas Hunt's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On June 12, 2003, the district court convicted Hunt, pursuant to a guilty plea, of one count of burglary while in possession of a firearm and two counts of robbery with the use of a deadly weapon. The district court sentenced Hunt to serve a prison term of 62 to 156 months for the burglary count and two equal and consecutive prison terms of 36 to 156 months for each of the robbery counts. The district court imposed the sentences for each count to run concurrently and gave Hunt 712 days credit for time served. Hunt did not file a direct appeal.

On May 10, 2005, the district court granted Hunt's proper person motion to correct an illegal sentence. The district court determined that the original judgment of conviction contained a clerical error and entered an amended judgment of conviction, which reduced Hunt's sentence for the count of burglary while in possession of a firearm from 62 to 156 months to 36 to 156 months.

On September 13, 2007, Hunt filed a post-conviction petition for a writ of habeas corpus in the district court. In his petition, Hunt claimed that his first appearance before the Parole Board was 408 days late as a result of the clerical error in his original judgment of conviction. As a remedy, Hunt asked the district court to grant him an “additional 408 days credit for time served” and to “issue a writ of mandamus requiring the [Parole Board] to conduct a parole hearing regarding Petitioner with all immediacy.” The State filed a response. Visiting Senior Judge Noel Manoukian heard argument and granted the habeas petition. Immediately thereafter, the State filed a motion to reconsider. Hunt filed an opposition. District Judge Douglas Herndon heard argument on the State’s motion, granted reconsideration, struck the order granting Hunt’s habeas petition, and denied Hunt’s habeas petition. This appeal followed.

First, Hunt contends that “the State’s motion for reconsideration before a judge who did not render the order to be reconsidered, constituted improper judge shopping [and that] the State’s remedy was an appeal to the Nevada Supreme Court.” Hunt relies almost exclusively on Arizona precedent to support this contention. We note that no Nevada statute or Nevada precedent prohibits the State from seeking reconsideration of an order granting a post-conviction petition for a writ of habeas corpus.

The record reveals that Hunt’s case was assigned to District Judge Herndon. However, during District Judge Herndon’s absence, visiting Senior Judge Manoukian heard argument on Hunt’s habeas petition, granted the petition, instructed Hunt to prepare the order, and observed that it would probably be District Judge Herndon “who will be lending his signature to [the order] unless he overrules me.” The State

filed a motion to reconsider in the district court on the very day that Senior Judge Manoukian announced his decision. Nine days later, District Judge Herndon determined that reconsideration was appropriate and granted the State's motion. Under these circumstances, we conclude that Hunt's claim of improper judge shopping is belied by the record and that the district court did not abuse its discretion by granting the State's motion to reconsider.

Second, Hunt contends that he "is entitled to the just and equitable remedy that Senior Judge Manoukian previously granted [him] as a result of the court's undisputed clerical error that all parties agree was perpetrated against [him] to his extreme detriment." Relying primarily on Warden v. Peters, 83 Nev. 298, 301, 429 P.2d 549, 551 (1967), which provides "that courts which make a mistake in rendering a judgment which works to the detriment of the defendant will not allow it to stand uncorrected," Hunt asserts that "Nevada law requires that the judiciary correct its own errors and that the court must offer a just and equitable remedy to Appellant."

As a general rule, the district court lacks jurisdiction to modify a sentence after the defendant has begun serving it. Staley v. State, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990), overruled on other grounds by Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). There are three exceptions to this rule. First, for reasons of due process, a district court may "correct, vacate or modify a sentence that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant, but only if the mistaken sentence is the result of the sentencing judge's misapprehension of a defendant's criminal record." Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996)

(internal quotation marks and emphasis omitted). Second, a district court has the inherent authority to correct a facially illegal sentence. *Id.* at 707-08, 918 P.2d at 324; *see also* NRS 176.555. And, third, the district court may correct clerical mistakes in judgments at any time. NRS 176.565. If none of these exceptions are applicable, then “once a person is incarcerated in the state prison and is subject to the power of the executive parole board . . . the power to alleviate the sentence rests entirely with the executive branch.” *State, Dep’t of Prisons v. Kimsey*, 109 Nev. 519, 523, 853 P.2d 109, 112 (1993) (internal quotation marks and citation omitted).

The record reveals that, in 2005, the district court determined that Hunt’s original judgment of conviction contained a clerical error and corrected the error by entering an amended judgment of conviction, which reduced Hunt’s sentence for the count of burglary while in possession of a firearm from 62 to 156 months to 36 to 156 months. Later that same year, Hunt appeared before the Parole Board and was institutionally paroled to his two consecutive deadly weapon enhancement sentences. Two years later, Hunt wrote to the Nevada Department of Corrections seeking a remedy based on his claim that but for the clerical error in his judgment of conviction he would have appeared before the Parole Board in June 2004, instead of August 2005. Hunt’s letter was forwarded to the Parole Board, which treated the letter as a request to reconsider its order granting Hunt institutional parole and voted not to change the parole eligibility date for the remaining terms as set forth in its August 2005 order.


We conclude that the district court corrected its clerical error when it entered the amended judgment of conviction and that any further change to Hunt’s sentence had to come from the Parole Board.


Accordingly, Hunt was not entitled to the remedy that Senior Judge Manoukian initially granted, and District Judge Herndon did not abuse his discretion by denying Hunt's habeas petition.

Having considered Hunt's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Douglas W. Herndon, District Judge  
Amesbury & Schutt  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk