

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MARISCAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51205

FILED

DEC 03 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Y. [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant David Mariscal was convicted of first-degree murder in the 1993 shooting of Apolonio Ramos-Rodriguez and was sentenced to life without the possibility of parole for the murder and to an equal and consecutive term for the use of a deadly weapon. This court dismissed Mariscal's direct appeal in 1996.¹ Mariscal then filed a timely post-conviction petition for a writ of habeas corpus with the assistance of counsel. After conducting an evidentiary hearing, the district court granted the petition in part and denied it in part and ordered a new

¹Mariscal v. State, Docket No. 26400 (Order Dismissing Appeal, April 3, 1996).

sentencing hearing. This court affirmed that order on appeal.² Following the new sentencing hearing, the district court sentenced Mariscal to serve two consecutive terms of life in prison with the possibility of parole. The amended judgment of conviction was entered on April 6, 2007—more than 10 years after Mariscal was first sentenced. The amended judgment included credit for 4,860 days of time served.

Shortly after the district court entered the amended judgment, Mariscal filed a proper person motion for modification or to correct an illegal sentence. The district court ordered the State to file a response. Based on the motion and response, the district court conducted a hearing to determine the proper amount of time served to be credited against Mariscal's sentence. Thereafter, the district court entered a second amended judgment of conviction on February 15, 2008, providing credit for 5,181 days of time served. This timely appeal from the second amended judgment of conviction followed.

Mariscal raises two issues in this appeal—one related to the sentence for the deadly weapon enhancement and the other related to his parole eligibility. We conclude that both arguments lack merit.

First, Mariscal argues that the district court erred in denying him further modification of his sentence to give him the benefit of recent ameliorative amendments to the deadly weapon enhancement statute.³ As

²State v. Mariscal, Docket No. 41660 (Order of Affirmance, October 10, 2006).

³See 2007 Nev. Stat., ch. 525, § 13, at 3188-89.

this court recently held in State v. District Court (Pullin),⁴ the 2007 amendments to NRS 193.165 do not apply to offenses committed before the effective date of the amendments. Because Mariscal committed the charged offense before the effective date of the amendments to NRS 193.165,⁵ he is not entitled to the benefit of those amendments. Accordingly, the district court did not err by refusing to further modify Mariscal's sentence based on the amendments to NRS 193.165.

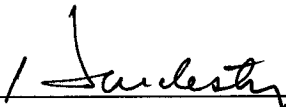
Second, Mariscal suggests that the district court "may have erred" in failing to find that his constitutional rights had been violated because the parole board had not conducted a parole hearing pursuant to the amended judgment. This argument seems to be based on a discussion at the sentencing hearing in 2007 about when Mariscal would be eligible for parole under the new sentence. But Mariscal does not seek any specific relief in this appeal and suggests, instead, that he does not yet have a due process argument regarding his parole eligibility. In this, he appears to address a hypothetical situation. Given that Mariscal only sought modification of his sentence below and did not pursue appropriate relief with respect to the scheduling of a parole hearing or his parole status, we conclude that his arguments regarding parole are not properly raised in this appeal.

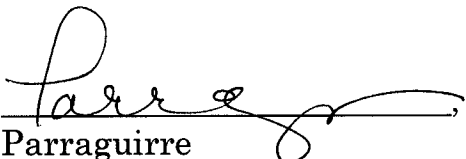
⁴124 Nev. ___, 188 P.3d 1079 (2008).

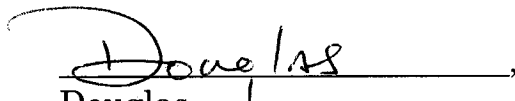
⁵See 2007 Nev. Stat., ch. 525, § 22, at 3196 (providing an effective date of July 1, 2007).

Having considered Mariscal's claims and concluded that he is not entitled to relief, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk