IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT THOMAS BINFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51258

FILED

OCT 15 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to modify or vacate judgment of conviction. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On April 12, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On March 13, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On June 27, 2007, the district court denied the petition. This court affirmed the district court's order on appeal.[1]

On January 29, 2008, appellant filed a proper person motion to modify or vacate judgment of conviction in the district court. The State

[1]Binford v. State, Docket No. 49716 (Order of Affirmance, June 6, 2008).

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opposed the motion. On February 20, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that the district court erroneously applied 2005 amendments to NRS 201.230 (lewdness with a child), which required the district court to impose a life term rather than permitting discretion to choose between a life term and a definite term as set forth in the 2003 version of the statute.[2]

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 correct or vacate 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.[4] "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 of sentence.'"[5] A motion to modify or vacate a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[6]

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[2]Compare 2005 Nev. Stat., ch. 507, § 33, at 2877 to 2003 Nev. Stat. ch. 461, § 2 at 2826.

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

[4]Id.

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

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

Our review of the record on appeal reveals that the district court did not err in denying the motion. Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was without jurisdiction in this matter.[7] Appellant further failed to demonstrate that the district court relied upon a mistake about his criminal record that worked to his extreme detriment. Appellant agreed to receive a recommended sentence of life imprisonment as part of the plea negotiations in exchange for the State's promise not to purse the original charges, which included two counts of sexual assault on a minor under the age of fourteen years, an additional count of lewdness with a minor under the age of fourteen years, and one count of open or gross lewdness. Appellant previously argued in his habeas corpus petition that his trial counsel was ineffective for failing to inform him of the potential sentences under the 2003 version of NRS 201.230 and that his plea was invalid in this regard. This court determined that the district court had not erred in rejecting these claims. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument. Therefore, we affirm the order of the district court.

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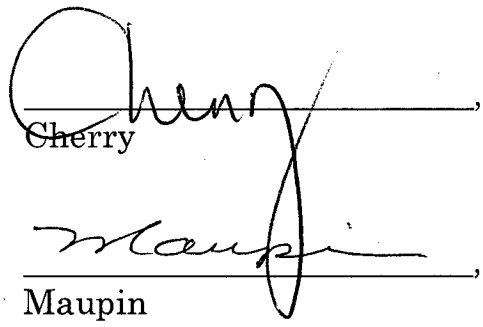
[7]See 1999 Nev. Stat., ch. 105, § 5, at 471-72 (providing for a term of life imprisonment for the offense of lewdness with a child under the age of fourteen years) (as amended in 1997); 2003 Nev. Stat. ch. 461, § 2, at 2826 (providing for a term of life imprisonment or a definite term of not less than two years or more than twenty years for the offense of lewdness with a child under the age of fourteen years). Notably, the charging information stated that the crime occurred on or between January 1, 2002 and December 31, 2004.

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry

_____, J.
Maupin

_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Robert Thomas Binford
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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