

IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD M. ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51463

FILED

DEC. 18 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 appellant's motion to modify a sentence. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On October 9, 2006, appellant was convicted, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of 60 to 150 months in the Nevada State Prison. No direct appeal was taken.

On March 10, 2008, appellant filed a proper person "motion for correction or modification of sentence" in the district court. The State opposed the motion. On March 31, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his sentence should be modified because the majority of the prior convictions used to adjudicate him a habitual criminal were misdemeanors or were stale and trivial.

"[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 appellant's sentence was not based on a mistaken assumption about his criminal record. Between 1987 and 1994, appellant was convicted in California of burglary, escape from jail with a prior felony and use of force, petty theft, grand theft, and robbery. Four of those five crimes are, by statute, felonies in Nevada.³ Appellant was also convicted of burglary in Nevada in 2003. Thus, appellant had well more than the two prior felony convictions required for "small" habitual criminal adjudication.⁴ Moreover, as part of his guilty plea agreement, appellant stipulated to the "small" habitual criminal enhancement and admitted to the prior convictions listed above. Therefore, the district court did not err in denying appellant's motion.⁵

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

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

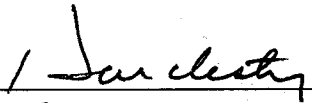
³See NRS 200.380 (robbery); NRS 205.060 (burglary); NRS 205.0835 (theft); NRS 212.090 (escape).

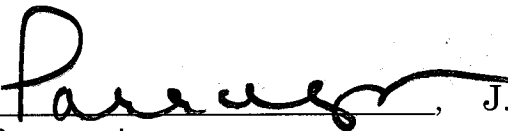
⁴See NRS 207.010(1)(a).


⁵Appellant also claimed that his guilty plea agreement was not accepted knowingly and intelligently and that the district court erred in failing to exercise its discretion in adjudicating him a habitual criminal. Those claims were outside the limited scope of a motion to modify and were thus subject to summary denial. See Edwards, 112 Nev. at 708-09 n.2, 918 P.2d at 325 n.2.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Kenneth C. Cory, District Judge
Reginald M. Anderson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.