

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT MILTON MILLSAPP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51711

FILED

DEC 17 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion for sentence modification. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On June 21, 2007, the district court convicted appellant, pursuant to a guilty plea, of attempted burglary. The district court sentenced appellant to serve a term of 18 to 60 months in the Nevada State Prison. No direct appeal was taken.

On April 10, 2008, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On June 10, 2008, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that he received a sentence of 18 to 60 months because he failed to appear at a sentencing hearing on April 4, 2007. Appellant claimed that just prior to that date he had a death in his family and he went to California to be with his relatives. He further claimed that he contacted the Clark County Public Defender's Office to ask his attorney to request a 30-day continuance, his attorney failed to request the continuance or explain the situation to the district

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court, and if the court had been aware of the circumstances a bench warrant would not have been issued and he would have received the sentence recommended by the Department of Parole and Probation [the Department], which was 12 to 36 months.

“[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 motion was without merit. First, information about why a defendant failed to appear at a particular hearing is not considered a part of his criminal record. Moreover, in its order denying appellant’s motion, the district court noted that: (1) not only did appellant fail to appear at sentencing, but he had previously failed to report to the Department as instructed, and thus a bench warrant would have issued even if a continuance had been requested; (2) defendant was not brought back from California on a bench warrant return until June 2, 2007, and thus he would not have been present in Nevada for sentencing even if a 30-day continuance had been granted; and (3) appellant had three prior felonies, his probation had been revoked on the most recent conviction, and, based on appellant’s criminal record, the district court never intended to follow the Department’s recommendation of 12 to 36 months. Because appellant

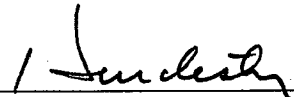
¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

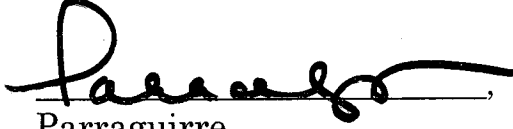
²Id. at 708-09 n.2, 918 P.2d at 325 n.2.


failed to demonstrate that his sentence was based on a mistaken assumption about his criminal record that worked to his extreme detriment, the district court did not err in denying the motion.

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴We 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.