

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD SCHULTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51836

FILED

OCT 22 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant James Edward Schultz's motion to modify his sentence. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

The district court convicted Schultz, pursuant to a guilty plea, of driving under the influence (DUI) with a prior felony conviction. The district court sentenced Schultz to serve a term of 36 to 120 months in the Nevada State Prison.

On March 5, 2008, Schultz filed a proper person motion to modify his sentence in the district court. The State opposed the motion. On April 11, 2008, the district court denied Schultz's motion. This appeal followed.¹

Schultz argues that the district court erred by denying his motion and by determining that it did not have jurisdiction to modify his sentence. We conclude that these claims lack merit.

¹Schultz is represented by counsel on appeal.

“[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.” Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied. Id. at 708-09 n.2, 918 P.2d at 325 n.2.

In his motion to modify his sentence, Schultz did not contest that he had a prior Illinois conviction for aggravated DUI. Rather, he argued that because the sentencing scheme in Illinois differs from the sentencing scheme in Nevada, the Illinois statute he was convicted under did not encompass the same or similar conduct as that prohibited under NRS 484.3792(2)(a)-(c). Therefore, Schultz asserted that the Illinois DUI conviction could not be used to enhance his DUI conviction in this matter to a felony.

The district court found that Schultz’s prior Illinois conviction was a same or similar offense to DUI in the state of Nevada and therefore, Schultz’s Illinois conviction was properly used for sentence enhancement in this matter. The district court also determined that given the narrow bases upon which a sentence may be modified and because Schultz’s motion was not based on a mistake of fact about his criminal record and Schultz did not allege that the court sentenced him beyond what was authorized by law, it lacked jurisdiction to modify Schultz’s sentence.

We conclude that the district court’s determinations are supported by substantial evidence and are not clearly wrong. The record reveals that despite the disparity in the sentencing schemes, the Illinois statute Schultz was convicted under prohibits the same conduct prohibited

in NRS 484.3792(2)(a) and Schultz's Illinois conviction for aggravated DUI was a felony conviction. Accordingly, we conclude that the district court did not err by denying Schultz's motion to modify his sentence, and we

ORDER the judgment of the district court AFFIRMED.

1 Hardesty, C.J.
Hardesty

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Hon. Michael P. Gibbons, District Judge
Nathan Tod Young
Attorney General Catherine Cortez Masto/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk