

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DWAYNE PALMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52160

FILED

MAR 26 2009

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 a "motion to void judgment and/or motion to vacate judgment, and/or motion to amend judgment and motion to correct illegal sentence. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On May 17, 2001, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a term of life with the possibility of parole after 10 years in the Nevada State Prison. His sentence was suspended and appellant was placed on probation for an indeterminate period not to exceed 50 months. Appellant did not file a direct appeal. On November 16, 2004, the district court revoked appellant's probation and ordered that the original sentence be executed.

On February 2, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 23, 2005, the district court denied

appellant's petition. This court affirmed the decision of the district court on appeal. Palmer v. State, Docket No. 45986 (Order of Affirmance, February 10, 2006).

On February 15, 2008, appellant filed several motions in the district court all challenging the impropriety of his arrest and the validity of his conviction. He filed a "motion to void judgment and/or motion to vacate judgment, and/or motion to amend judgment and motion to correct illegal sentence," a motion for "judgment on the pleadings; confession of error," a motion to "preserve evidence not provided by prosecutor in discovery," a motion to compel discovery, and a motion for suppression of evidence. On July 11, 2008, the district court denied appellant's motions. This appeal followed.¹

In his "motion to void judgment and/or motion to vacate judgment, and/or motion to amend judgment and motion to correct illegal sentence," appellant contended that the State failed to provide evidence that would show that the search of his vehicle was executed prior to obtaining a search warrant. He claimed that had the State provided this evidence in discovery, the search warrant would have been suppressed and he would not have been convicted.

¹To the extent that appellant is challenging the district court's denial of his motion for "judgment on the pleadings; confession of error," his motion to "preserve evidence not provided by prosecutor in discovery," his motion to compel discovery, and his motion for suppression of evidence, we conclude that the district court did not abuse its discretion in denying these motions.

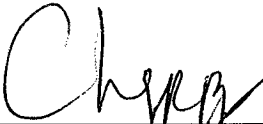
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “A motion 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.’” Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). In addition, 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, 112 Nev. at 708, 918 P.2d at 324. A motion to correct an illegal sentence or 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.


Based upon our review of the record on appeal, we conclude that appellant’s claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence or a motion to modify a sentence. Appellant’s sentence was facially legal, and the record does not support an argument that the district court was without jurisdiction in this matter. See NRS 453.3385(3). Appellant failed to allege that the district court based its sentencing on mistaken assumptions about the appellant’s criminal record. Therefore, the district court did not err in denying his motion.

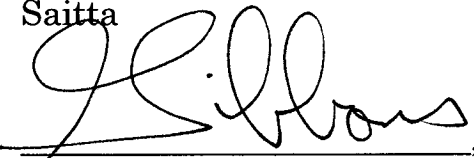
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Anthony Dwayne Palmer
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

²We 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.