

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT HOLGUIN A/K/A ALBERTO
M. HOLGUIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52192

ALBERT HOLGUIN A/K/A ALBERTO
M. HOLGUIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52271

FILED

FEB 20 2009
TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE IN DOCKET NO. 52192 AND
REVERSAL AND REMAND IN DOCKET NO. 52271

Docket No. 52192 is a proper person appeal from an order of the district court denying a motion for sentence modification. Docket No. 52271 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition. NRAP 3(b). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On January 16, 2007, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary, one count of burglary, and one count of voluntary manslaughter. The

district court sentenced appellant to serve a term of twelve months for the conspiracy count, a consecutive term of 24 to 60 months for the burglary count, and a consecutive term of 48 to 120 months for the voluntary manslaughter count. This court affirmed the judgment of conviction on direct appeal. Holguin v. State, Docket No. 48711 (Order of Affirmance, January 9, 2008). The remittitur issued on February 5, 2008.

Docket No. 52192

On May 28, 2008, appellant filed a proper person motion for sentence modification in the district court. On August 22, 2008, the district court denied the motion. This appeal followed.

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, appellant claimed that his trial counsel was ineffective at trial and sentencing and the district court erroneously based his sentence on his codefendant’s admission of guilt and sentence. Appellant also claimed that he was not permitted an opportunity to review the presentence investigation report. These claims fell outside the scope of claims permissible in a motion for sentence modification, and thus, the district court did not err in denying relief on these claims.

Next, appellant claimed that the presentence investigation report contained false information regarding a 1999 offense and was erroneously based upon “investigate reports.” Appellant failed to

demonstrate that the information was false or that the district court relied upon the information in sentencing appellant. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that the facts set forth in the presentence investigation report should have been presented to a jury and proved beyond a reasonable doubt. Because these facts did not increase the sentence beyond the statutory maximum, the facts were not required to be presented to a jury or proven beyond a reasonable doubt. See Apprendi v. New Jersey, 530 U.S. 466 (2000). Therefore, we conclude that the district court did not err in denying this claim, and we affirm the order of the district court denying the motion for sentence modification.

Docket No. 52271

On April 8, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 6, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the Nevada Department of Corrections incorrectly calculated his statutory credits. Appellant claimed that he was entitled to 20 days of statutory good time credits per month from the date of sentencing and 10 days of work credits per month. Appellant claimed that the Department used a formula to reduce his credits by half; in support of his assertion, appellant attached another inmate's grievance form with a response from a prison official

stating that "time is applied as 50% of credits earned. Therefore 10 credits equals 5 days, As an example." Appellant further claimed that he received misinformation regarding the application and earning of statutory credits and parole.

In opposing the petition below, the Attorney General relied upon a credit history report that was purportedly attached to the motion to dismiss. However, the record on appeal transmitted to this court did not contain any attachment. Consequently, this court directed the clerk of the district court to transmit the attachment or inform this court that no such attachment had been filed in the district court. The clerk of the district court informed this court that the attachment had not been filed in the district court.


The failure to attach a copy of the credit history report prevented the district court and this court from conducting a meaningful review of appellant's claims regarding the calculation of his statutory credits. Accordingly, we reverse the order of the district court denying the petition, and we remand this matter to the district court to conduct further proceedings on the petition, which would include a review of appellant's credit history report.

Conclusion

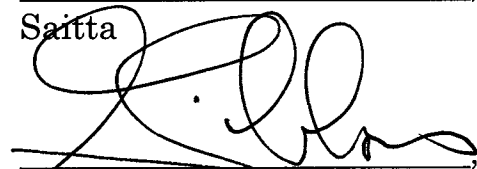
Having reviewed the records on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN Docket No. 52192 AND REVERSED in Docket No. 52271 AND

REMANDED for the district court to conduct proceedings consistent with this order.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court Dept. 7
Albert Holguin
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.