

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN D. ORR A/K/A STEVEN
DANIEL ORRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52296

FILED

FEB 06 2009

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 a motion for modification of sentence. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On July 8, 1999, the district court convicted appellant, Steven Daniel Orr, pursuant to a guilty plea, of one count of conspiracy to commit robbery and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 24 to 60 months for conspiracy to commit robbery and two consecutive terms of 72 to 180 months for the robbery count in the Nevada State Prison. The conspiracy count was ordered to run concurrently with the robbery count. This court dismissed appellant's appeal. Orre v. State, Docket No. 34558 (Order Dismissing Appeal, November 19, 1999).

On May 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. On September 11, 2000, the district court denied the petition. Appellant did not file an appeal.

On October 17, 2000, appellant filed a proper person “motion for leave to proceed to file writ of habeas corpus pursuant to NRCPC 7(b)(y)[sic].” The State opposed the motion. The district court denied the petition on November 29, 2000. Appellant did not file an appeal.

On December 18, 2000, appellant filed a proper person post-conviction petition for writ of habeas corpus and a brief in support of the petition. On March 20, 2001, the district court denied the petition as successive. On appeal, this court affirmed the district court’s denial of appellant’s petition. Orre v. State, Docket No. 37353 (Order of Affirmance, December 17, 2001).

On July 8, 2008, appellant filed a motion for modification of sentence. On August 6, 2008, the district court denied appellant’s motion. This appeal followed.

In his motion, appellant claimed that there were errors in his presentence investigation report (PSI) which resulted in mitigating evidence not being presented to the district court. Specifically, appellant stated that the PSI included statements that he had “continuous negative contact” with police but did not inform the district court that on February 24, 1999, he agreed to become an informant for the police. In addition, appellant claimed that his sentence should be modified because NRS 193.165 changed the penalty for using a deadly weapon in the commission of a crime. He argued that NRS 193.165 should apply retroactively to his sentence.

“[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.

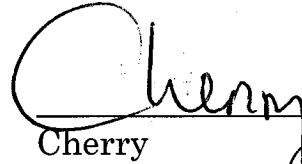
Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. The information that appellant may have been working as a confidential informant might have been helpful to the district court in sentencing appellant. However, appellant had a fairly serious adult criminal record. Appellant also had several juvenile offenses. Given this information, it was not a misrepresentation that appellant had continuous negative contact with law enforcement. Further, given appellant's prior criminal history, the mitigating effect of the confidential informant agreement would have been minimal. Appellant failed to demonstrate that the failure to provide this information worked to his extreme detriment. Therefore, the district court did not err by denying this claim.

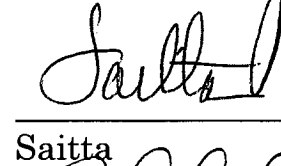
In addition, appellant's claim that the recent amendments to NRS 193.165 applied retroactively to his sentence lacked merit. First, this claim fell outside the narrow scope of claims permissible in a motion to modify sentence. As a separate and independent ground to deny relief, we note that this court has concluded that the amendment to NRS 193.165 does not apply retroactively, but rather applies based on the date the offense was committed. State v. Dist. Ct. (Pullin), 124 Nev. ___, ___, 188 P.3d 1079, 1081 (2008). Therefore, we conclude that the district court did not err in denying the motion.

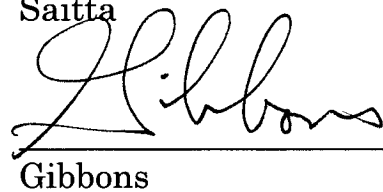
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Stewart L. Bell, District Judge
Steven D. Orr
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk