

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELVIS WELLS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52336

**FILED**

FEB 10 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 for resentencing.” Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On June 8, 2007, the district court convicted appellant, Elvis Wells, Jr., 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 72 months in the Nevada State Prison for the conspiracy count and two consecutive terms of 24 to 120 months in prison for the robbery count. The conspiracy count was ordered to run concurrent to the robbery count. No direct appeal was taken.

On November 14, 2007, appellant filed a proper person post-conviction petition for writ of habeas corpus. The State opposed this petition. On March 11, 2008, the district court denied the petition. On appeal, this court affirmed the district court’s denial of appellant’s petition. Wells v. State, Docket No. 50978 (Order of Affirmance, April 24, 2008).

09-03625

On June 14, 2008, appellant filed a document labeled “motion requesting resentencing” in the district court. The State opposed the motion. On October 15, 2008, the district court denied appellant’s motion. This appeal followed.

In his motion, appellant claimed that the amendments to NRS 193.165 should apply retroactively to his sentence. At the time of appellant’s conviction, NRS 193.165 provided for an equal and consecutive sentence when an offender used a deadly weapon during the commission of a crime. 1995 Nev. Stat., ch. 455, § 1, at 1431. In 2007, the legislature amended NRS 193.165 to provide for an enhancement of 1 to 20 years, to be served consecutively to the term for the primary offense. 2007 Nev. Stat., ch. 525, § 13, at 3188-89.

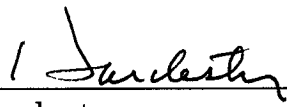
Because of the nature of the relief sought, we construe this as a motion to modify sentence. “[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” Edwards v. State, 112 Nev. 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 appellant’s claim fell outside the narrow scope of claims permissible in a motion to modify sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. 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

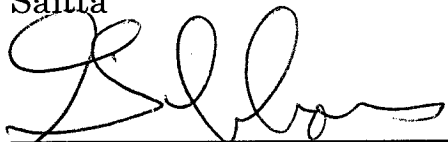
applies based on the date the offense was committed. State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, \_\_\_, 188 P.3d 1079, 1081 (2008). Therefore, we affirm the order of the district court denying the motion.

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Douglas W. Herndon, District Judge  
Elvis Wells, Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk