

IN THE SUPREME COURT OF THE STATE OF NEVADA

DESMOND DAMON FLEMING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52379.

FILED

FEB 04 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a “motion to reduce amended judgment of conviction.” Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 24, 2003, appellant, Desmond Damon Fleming, was convicted by the district court, pursuant to a guilty plea, of one count of first-degree murder and, pursuant to an Alford plea, one count of perjury. See North Carolina v. Alford, 400 U.S. 25 (1970). The district court sentenced appellant to serve a term life in prison with the possibility of parole after 20 years for first-degree murder and 19 to 48 months in prison for perjury, to run concurrently to the first-degree murder count. Appellant did not pursue a direct appeal.

On August 14, 2008, appellant filed a proper person “motion to reduce amended judgment of conviction” in the district court. The State opposed the motion. On September 17, 2008, the district court denied the motion. This appeal followed.

In his motion, it appears that appellant raised two claims. First, appellant requested that he would like his “plea of guilty suspended and imposed and granted probation.” Second, it appears that appellant claimed that counsel was ineffective and asserts that he would “like a new trial granted.”

Because of the nature of the relief sought, we elect to treat this as a motion to modify a 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.

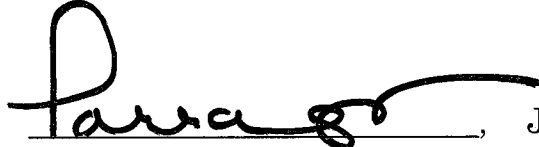
Based upon our review of the record on appeal, we conclude that appellant's requests fell outside the narrow scope of claims permissible in a motion to modify sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Therefore, the district court did not err in denying the motion.¹

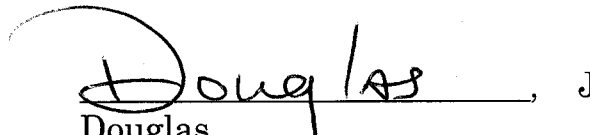
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

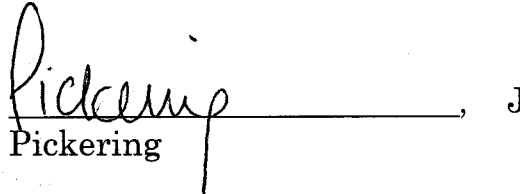
¹To the extent the motion could be construed as a motion for a new trial, the motion was untimely filed. NRS 176.515.

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.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Jackie Glass, District Judge
Desmond Damon Fleming
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk