IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK DEON WORDLAW A/K/A FREDRICK DEON WORDLAW, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 52523
FREDERICK DEON WORDLAW A/K/A FREDRICK DEON WORDLAW, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 53312

FILED

DEC 02 2009

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

ORDER OF AFFIRMANCE

Docket No. 52523 is a proper person appeal from an order of the district court denying a "motion to modify and/or correct illegal sentence," a motion for reconsideration, and a motion for clarification. Docket No. 53312 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b).

On March 24, 2004, the district court convicted appellant, pursuant to a guilty plea, of robbery and battery with the use of a deadly weapon. The district court sentenced appellant to serve in the Nevada State prison a term of 24 to 72 months for robbery and a consecutive term of 26 to 120 months for battery with the use of a deadly weapon. This

court affirmed the judgment of conviction and sentence on appeal. Wordlaw v. State, Docket No. 43106 (Order of Affirmance, September 7, 2004). The remittitur issued on October 5, 2004.

Appellant unsuccessfully sought post-conviction relief by way of a petition for a writ of habeas corpus and a motion to withdraw guilty plea. Wordlaw v. State, Docket No. 43747 (Order of Affirmance, November 29, 2004); Wordlaw v. State, Docket No. 48526 (Order of Affirmance, September 24, 2007).

Docket No. 52523

On August 19, 2008, appellant filed a proper person "motion to modify and/or correct illegal sentence." The State opposed the motion. On December 18, 2008, the district court denied the motion. On January 23, 2009, appellant filed a motion for clarification, which the district court denied on February 2, 2009.[1] This appeal followed.

In his motion, appellant claimed that the Presentence Investigation Report (PSI) was inaccurate because it incorrectly alleged that he was affiliated with a gang and had discharged a firearm from a moving vehicle.

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[1]Appellant also appealed the denial of a motion for reconsideration, but did not list the date on which it was filed or the date on which the district court denied the motion. The record on appeal and district court minutes do not contain any information about a motion for reconsideration pertaining to the denial of the "motion to modify and/or correct illegal sentence." In addition, a motion to clarify and a motion for reconsideration are not appealable orders. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Thus, we dismiss the portion of the appeal relating to the motion to clarify and the motion for reconsideration

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 correct an illegal sentence way 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. Id. "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)). A motion to modify or correct an illegal 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.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant failed to demonstrate that the district court relied upon any mistake about his criminal record that worked to his extreme detriment. Appellant made only bare and unsupported claims that the PSI was incorrect. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Moreover, appellant failed to establish that the district court relied on these alleged errors in sentencing appellant. The district court did not discuss appellant's criminal history or gang affiliation at the sentencing hearing and there is nothing in the record to indicate that the district court relied on anything other than the facts of this crime when sentencing appellant.

In addition, appellant's sentence was facially legal. NRS 200.380 and 2005 Nev. Stat., ch. 64, § 3, at 178-79 (codified as NRS 200.481). Further, there is nothing in the record indicating that the

district court was without jurisdiction to impose a sentence in this case. Appellant's claim that the district court relied on incorrect information in the PSI fell outside of the scope of claims permissible in a motion to correct an illegal sentence. Therefore, we affirm the order of the district court denying the motion.

Docket No. 53312

On November 4, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, challenging a prison disciplinary hearing in which he was found guilty of M6 (failure to attend work) and sanctioned to 30 days of loss of canteen privileges. 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 January 22, 2009, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that his due process rights were violated because he was not allowed to call witnesses to testify at the hearing, the evidence relied upon was not accurate, and he was misinformed as to the reasons why he was not allowed to call witnesses.

The district court dismissed the petition because it was erroneously filed in a criminal case. Based upon our review of the record on appeal, we conclude that this was an insufficient reason to dismiss the petition. Even assuming that a petition for a writ of habeas corpus should be filed in a separate action, the filing of a petition for a writ of habeas corpus in a criminal case appeared to be a filing issue for the district court

clerk's office and a curable defect.[2] Nevertheless, relief was properly denied in this case, and we affirm the decision to dismiss the petition for the reasons discussed below. See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Based upon our review of the record on appeal, we conclude that appellant is not entitled to relief. This court has "repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof." Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 484 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which "imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life"). Appellant did not allege and the record does not reveal that any credits were actually forfeited in the instant case. Appellant's challenges to the loss of canteen privileges were challenges to the conditions of his confinement. Consequently, appellant's challenge was not cognizable in a petition for a writ of habeas corpus. Therefore, we affirm the order of the district court dismissing the petition.

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

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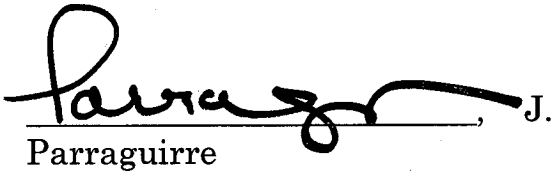
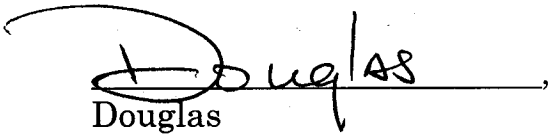
[2]Even if a petitioner designated a criminal case number on the face of his petition, nothing would prevent the clerk of the district court from filing the petition as a separate action.

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

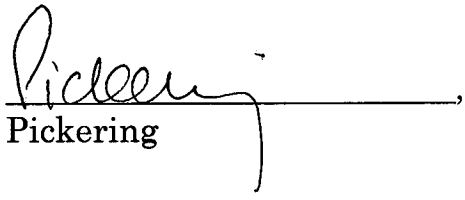
ORDER the judgments of the district court AFFIRMED.[3]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Frederick Deon Wordlaw
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk

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[3]We 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.