

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM SAKIE ARAJAKIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52604

FILED

AUG 07 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 to vacate, correct and/or modify illegal sentence.” Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 28, 1990, the district court convicted appellant, pursuant to a jury verdict, of 2 counts of embezzlement. The district court adjudicated appellant a habitual criminal and sentenced him to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on appeal. Arajakis v. State, 108 Nev. 976, 843 P.2d 800 (1992). The remittitur issued on March 30, 1993.

On March 24, 1994, appellant filed a post-conviction petition for a writ of habeas corpus in the district court with the assistance of counsel. The State opposed the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On July 6, 1994, the district court orally denied the petition, and on July 13, 2007, the district court entered a written order denying appellant’s petition. This court affirmed the order of the district court on appeal. Arajakis v. State, Docket No. 49349 (Order of Affirmance, September 7, 2007).

On August 30, 2008, appellant filed a “motion to vacate, correct and/or modify illegal sentence” in the district court. The State opposed the motion. On September 24, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed as follows: NRS 207.010 is unconstitutional, the district court never adjudicated him as a habitual criminal, the judgment of conviction was not properly entered, the district court did not have jurisdiction to sentence him because it did not adjudicate him a habitual criminal, and his sentence as a habitual criminal exceeds the statutory maximum of his underlying charges.

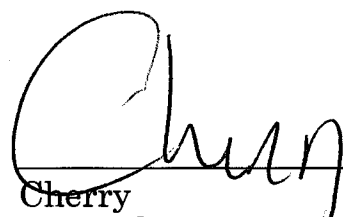
A motion to modify a sentence “is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment.” Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). A motion to correct an illegal sentence may only challenge 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 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.

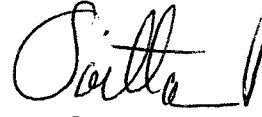
Our review of the record on appeal reveals that the district court did not err in denying appellant’s motion. Appellant failed to demonstrate that the district court relied upon any mistake about his criminal record that worked to his extreme detriment. Further, appellant’s claim that the district court did not have jurisdiction to


sentence him because it did not adjudicate him a habitual criminal is patently without merit. Following review of appellant's criminal history, the district court stated "[i]f there was ever anyone who fit in the category as a habitual criminal I think it's you." Additionally, appellant's claim that his sentence was illegal because his sentence exceeds the statutory maximums for the primary offense of embezzlement is without merit. As appellant was adjudicated a habitual criminal, sentencing pursuant to NRS 207.010 and in excess of the statutory maximums for embezzlement and grand larceny was appropriate. Accordingly, appellant's sentences were facially legal, and appellant failed to demonstrate that the district court was not a competent court of jurisdiction. See NRS 205.300; 1985 Nev. Stat., ch. 366, § 2, at 1026-27 (NRS 207.010). Therefore, we affirm the order of the district court.

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. Donald M. Mosley, District Judge
William Sakie Arajakis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk