

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABRAHAM J. CRUZADO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52770

**FILED**

**JUL 31 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 appellant Abraham Cruzado's "Motion to Correct Parole and Probation Report (PSI) and/or Correct Sentence." Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On August 15, 1991, the district court convicted appellant, pursuant to a guilty plea, of five counts of sexual assault. The district court sentenced appellant to serve four consecutive terms of life with the possibility of parole and one concurrent term of life with the possibility of parole in the Nevada State Prison. The district court also ordered appellant to pay restitution in the amount of \$2,950.76. On appeal, this court affirmed appellant's sexual assault convictions and life sentences but vacated the restitution portion of appellant's judgment of conviction. Cruzado v. State, 110 Nev. 745, 879 P.2d 1195 (1994), overruled in part by Lee v. State, 115 Nev. 207, 985 P.2d 164 (1999). Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ

of habeas corpus. Cruzado v. Warden, Docket No. 29322 (Order Dismissing Appeal, November 20, 1998).

On September 26, 2008, appellant filed a "Motion to Correct Parole and Probation Report (PSI) and/or Correct Sentence" in the district court. The State did not respond to the motion. On October 28, 2008, the district court denied appellant's motion. This appeal followed.

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. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "[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." Id. 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.

In his motion, appellant claimed that the presentence investigation report (PSI) filed by the Department of Parole and Probation contained numerous inaccuracies, including: a false statement that he had used a gun in the commission of the offenses, false statements that he had previously threatened his family, and a statement that he had nine prior misdemeanor convictions when he really had five misdemeanor convictions. Appellant claimed that these inaccuracies worked to his extreme detriment at sentencing and have resulted in the denial of parole.

Based on our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. First, we note that despite appellant's claims, the PSI did not state that appellant had used a gun in the commission of the sexual assault on the victim. Rather, the PSI contained the victim's statement that the appellant had told her that he had a gun before forcing her to engage in sexual activities. This statement was supported by the police report, indicating that the PSI was not inaccurate in this respect.

To the extent that the report may have been inaccurate, these inaccuracies did not work to appellant's extreme detriment at sentencing. Appellant was not sentenced pursuant to any type of deadly weapon enhancement. Further, at sentencing, counsel for appellant informed the court that one of the arrests and convictions listed in the PSI related to the actions of appellant's cousin, who sometimes used appellant's name. Counsel for appellant also informed the court that statements that appellant had previously threatened his family were inaccurate and based upon "hearsay upon hearsay." Thus, the court was aware of the alleged inaccuracies in the PSI. In sentencing the appellant to four consecutive terms of life with the possibility of parole, the district court stated that it was basing its decision on the level of brutality inflicted by appellant on the victim, and the lasting psychological effects of the assault on both the victim and her young daughter. Therefore, appellant failed to demonstrate that his sentence was based on mistaken assumptions that worked to his extreme detriment. Appellant also failed to demonstrate that his sentence was in excess of the statutory maximum, or that the

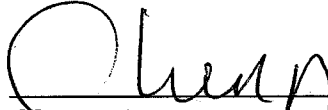
district court was without jurisdiction to impose the sentence. Accordingly, the district court did not err in denying appellant's motion to correct his sentence.


Finally, to the extent that appellant claimed that due process required the district court to order a corrected PSI, we conclude that appellant's claim lacked merit. Appellant claimed that he was denied parole due to the inaccuracies in the PSI and that the failure of the Department of Parole and Probation to correct these errors resulted in a denial of his due process rights. As a preliminary matter, we note that this claim falls outside the narrow scope of claims allowed in a motion to correct an illegal sentence or a motion to modify a sentence. In addition, the grant of parole is an act of grace by the state, in which no liberty interest exists. NRS 213.10705. Thus, because appellant has no liberty interest in the grant of parole, appellant failed to demonstrate how any denial of parole by the parole board deprived him of his due process rights. To the extent that appellant had any interest in the process related to the grant or denial of parole, due process requires only that an inmate receive an opportunity to be heard, and that when parole is denied, the inmate is told the reason for the denial. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 16 (1979). Appellant made no allegation that he did not receive the appropriate hearings before the parole board. Therefore, we conclude that the district court did not err in denying appellant's motion to correct his PSI.

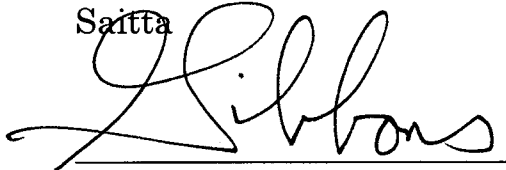
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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.<sup>1</sup>

  
\_\_\_\_\_, J.  
Cherry

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

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

cc: Eighth Judicial District Court Dept. 7, District Judge  
Abraham J. Cruzado  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>1</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.