

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WILLIAM OTTERNESS A/K/A
WILLIAM JAMES OTTERNESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52992

FILED

OCT 21 2009

ORDER OF AFFIRMANCE

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence and to modify sentence. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On March 8, 2007, the district court convicted appellant, pursuant to a jury verdict, of assault with a deadly weapon (count one) and battery with the use of a deadly weapon (count two). The district court sentenced appellant to serve the following terms in the Nevada State Prison: a term of 12 to 60 months for count one and a term of 36 to 120 months for count two. Count two was to run consecutive to count one. No direct appeal was taken.

On October 17, 2007, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On November 13, 2007, the district court denied appellant's motion. On appeal, this court affirmed the order of the district court.

Otterness v. State, Docket No. 50622 (Order of Affirmance, April 18, 2008).

On November 17, 2008, appellant filed a motion to correct an illegal sentence and to modify sentence. The State opposed the motion. On December 17, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant claimed as follows: his convictions violated double jeopardy and the district court relied on incorrect information when sentencing him because the presentence investigation report (PSI) stated that he had six previous felonies when he in fact only had three.

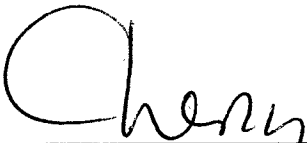
A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). “A motion to 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 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.


Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. Appellant's sentence was facially legal. 2005 Nev. Stat., ch. 64, § 2 at 176-178 (codified as 200.471) and 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. In addition, appellant's claim that his convictions violate double jeopardy fell outside of the scope of claims permissible in a motion to correct an illegal sentence or a motion to modify sentence. Appellant failed to demonstrate that the district court relied upon any mistake about his criminal record that worked to his extreme detriment. Appellant claimed in a previous motion to modify sentence that the district court relied on improper information when sentencing him because the PSI erroneously indicated that he had six felonies and this court rejected that claim. The doctrine of law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, we affirm the order of the district court denying the motion.

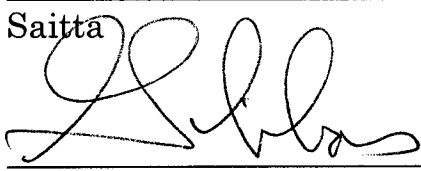
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

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

¹We 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.