

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52967

MICHAEL RAY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53335 ✓

FILED

FEB 03 2010

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

ORDER OF AFFIRMANCE

Docket No. 52967 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Docket No. 53335 is a proper person appeal from an order of the district court denying a "motion for amended information reducing the sentence to five (5) to twelve (12) years."¹ Eighth Judicial District Court,

¹These appeals shall stand submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Clark County; Douglas W. Herndon and Jackie Glass, Judges. We elect to consolidate these appeals for disposition. NRAP 3(b).²

Docket No. 52967

In his petition filed on December 16, 2008, appellant raised two claims of ineffective assistance of counsel.

First, appellant claimed that trial counsel was ineffective for failing to investigate mitigation evidence for sentencing. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Appellant stipulated to a specific sentence thereby negating trial counsel's duty to present mitigating information at sentencing. Further, appellant received the minimum sentence under the small habitual criminal statute. See NRS 207.010. Under these circumstances, appellant did not demonstrate a reasonable probability that he would have received a different sentence had trial counsel presented mitigation evidence. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to ensure that his sentence in this case would run concurrent to a sentence in another case. Appellant failed to demonstrate that he was prejudiced. See Strickland, 466 U.S. at 694; Kirksey, 112 Nev. at 988, 923 P.2d at 1107. Because appellant's judgment of conviction is silent as to

²To the extent appellant sought to appeal the amended JOC, the appeal was untimely filed, and we lack jurisdiction over that portion of the appeal in Docket No. 52967. NRAP(4)(b); Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).


whether his sentence in this case runs concurrent or consecutive to his other case, by default, the sentences run concurrent. See NRS 176.035(1), (2). Therefore, the district court did not err in denying this claim.

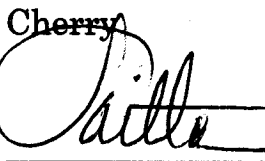
Docket No. 53335

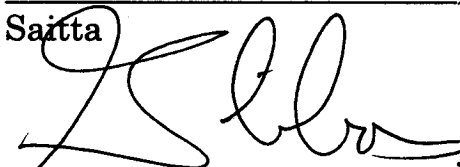
In a motion filed on December 16, 2008, appellant claimed that his sentence should be modified because he did not receive the sentence stipulated to in the plea agreement. Because of the nature of relief sought, we elect to treat the "motion for amended information" as a motion for modification of sentence. This claim fell outside the very narrow scope of claims permissible in a motion to modify sentence. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant failed to demonstrate that the district court relied upon any mistakes about his criminal record that worked to his extreme detriment. Id. Therefore, the district court did not err in 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____ J.

Cherry
 _____ J.

Saitta
 _____ J.
Gibbons

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