

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAFET CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53434

JAFET CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53893

FILED

DEC 03 2009

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL AND ORDER OF AFFIRMANCE

Docket No. 53434 is a proper person appeal from a February 25, 2009 order of the district court denying a “motion for sentence modification and/or plea agreement.” Docket No. 53893 is a proper person appeal from a July 9, 2009 order of the district court denying the same “motion for sentence modification and/or plea agreement.” Eighth Judicial District Court, Clark County; Valorie Vega, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b).

On September 5, 2008, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon (count one) and attempted murder with the use of a deadly weapon (count two). The district court sentenced appellant to serve a term in the Nevada State Prison of 35 to 156 months plus a consecutive term of 18 to 60 months for the deadly weapon enhancement for count one and a term of 43

to 240 months plus a consecutive term of 24 to 60 months for count two. Count two is to be served consecutive to count one. No direct appeal was taken.

On December 26, 2008, appellant filed a proper person “motion for sentence modification and/or plea agreement.” The State opposed the motion. On February 25, 2009, the district court denied the motion. However, on March 5, 2009, the district court vacated its order denying the motion to allow appellant additional time to file a reply to the State’s opposition. On March 16, 2009, appellant filed a notice of appeal from the February 25, 2009 order and the appeal was docketed in this court in Docket No. 53434. The district court then denied the motion orally on April 21, 2009, and in a written order filed on July 9, 2009. Appellant then filed a notice of appeal from the July 9, 2009 denial and the appeal was docketed in this court in Docket No. 53893.

Docket No. 53434

As stated above, the district court vacated the February 25, 2009 order denying the “motion for sentence modification and/or plea agreement” on March 5, 2009 and appellant filed a notice of appeal on March 16, 2009. As the district court’s order had been vacated when appellant filed the notice of appeal, there was no longer a final decision on the motion for appellant to appeal. See NRS 177.015(3). Therefore, this appeal is not properly before this court and we dismiss this appeal.

Docket No. 53893

In his “motion for sentence modification and/or plea agreement,” appellant claimed: (1) his trial counsel failed to assist him and failed to communicate with him; (2) his trial counsel failed to pursue a defense, file motions, or question witnesses; (3) his trial counsel failed to

adequately prepare for the case to proceed; (4) his trial counsel coerced his guilty plea; and (5) his trial counsel told him the sentences for each count would be imposed to run concurrent with each other and concurrent with a sentence for a separate conviction.¹

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 modify 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.

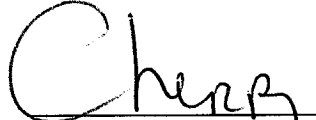
Our review of the record on appeal reveals that appellant’s claims fell outside the narrow scope of claims permissible in a motion to modify a sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Therefore, the district court did not err in denying this motion.


Conclusion


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

¹Due to the nature of the claims raised, we conclude that the district court did not err in construing the motion solely as a motion to modify sentence.

ORDER the appeal in Docket No. 53434 DISMISSED and
ORDER the judgment of the district court in Docket No. 53893
AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Jafet Chavez
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk