

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS J. HOGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57128

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Hooper*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a motion for sentence modification and motion to correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; David B. Barker, Judge.

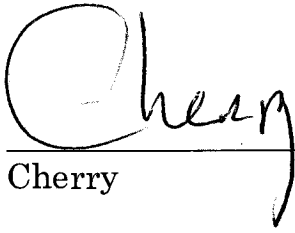
In his motion filed on September 13, 2010, appellant claimed his sentence should be modified or corrected for the following reasons: (1) his sentence was based on material errors in the presentence investigation report, which included a statement that he had 2 prior terms of imprisonment when he had only one prior term of imprisonment, a statement that he had a previous arrest for trespassing or evading police, and a failure to reflect reliance on the Sentence Recommendation Selection Scale; (2) the State's repetition of the fact regarding the prior terms of imprisonment at the sentencing hearing and denigration of his forensic psychological evaluation; (3) his sentence should not reflect a failure to make further admissions at the sentencing hearing; (4) his

¹This appeal has been 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


sentence was based solely on prior uncharged crimes; (5) the deadly weapon enhancement was not charged separately from the primary offense; (6) the deadly weapon enhancement allegedly violated Appendi v. New Jersey, 530 U.S. 466 (2000); and (7) his sentence was not proportionate to the sentences his codefendants received in this case.

Appellant failed to demonstrate that the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant further failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. See id. Appellant entered a guilty plea to the crime of robbery with the use of a deadly weapon; thus, the district court was within its authority to impose the deadly weapon enhancement and there was nothing invalid in the way the deadly weapon enhancement was charged in the instant case. See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant"); NRS 193.165(3). We therefore conclude that the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Thomas J. Hogan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk