

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN C. MCMILLAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58951

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

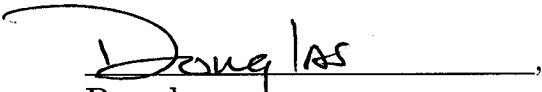
This is a proper person appeal from an order of the district court denying a motion to modify or correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

In his motion filed on May 24, 2011, appellant claimed that the district court abused its discretion in adjudicating him a small habitual criminal because his prior convictions involved non-violent offenses, convictions for second-degree burglary could not be used because there was no proof that he was represented by counsel or validly waived the right to representation, the State failed to present proof of the prior convictions, and his trial counsel was ineffective. 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

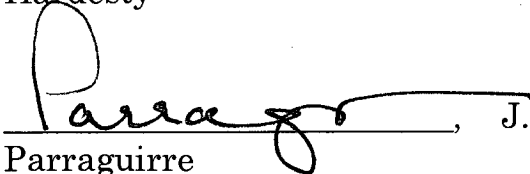
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

failed to demonstrate that his sentence was facially illegal and that the district court lacked jurisdiction. See id. Appellant waived proof of the prior convictions by entry of his guilty plea and stipulation to small habitual criminal treatment. NRS 207.016(6); Hodges v. State, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). Notably, the prior felony convictions were set forth in the information and appellant affirmatively acknowledged the existence of five prior convictions during the plea canvass. NRS 207.010 does not make any allowance for nonviolent or property offenses. 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.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Bryan C. McMillan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk