IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNIE C. LANE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35595

FILED

OCT 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [illegible]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to modify sentence.

On March 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of burglary (Count I) and theft (Count II) in district case number C155897. The district court sentenced appellant to serve a term of thirty-nine (39) to ninety-eight (98) months for Count I, and to serve a term of twenty-four (24) to sixty (60) months for Count II, to run concurrently with Count I, in the Nevada State Prison.[1] The district court also imposed these sentences to run concurrently with appellant's purported probation violation in district court case number C106190. Appellant did not file a direct appeal.

On May 15, 1999, the State filed a motion to correct an illegal sentence. In its motion, the State argued that appellant's sentences in district court case number C155897 should run consecutively to what was in fact a parole violation in district case number C106190.[2] Appellant was

---

[1]In addition to the $25.00 Administrative Assessment fee, appellant was required to pay restitution in the amount of $1,006.00 and the $250.00 testing fee for Genetic Marker testing on Count I.

[2]Pursuant to NRS 176.035(2): "whenever a person under sentence of imprisonment for committing a felony commits another crime constituting a felony and is sentenced to another term of imprisonment for that felony, the latter term must not begin until the expiration of all prior terms. If the person is a probationer at the time the subsequent felony is committed, the court may provide that the latter term. . .run concurrently with any prior terms. . . ." Thus, appellant's status as parolee, not probationer, was critical to sentencing.

not on probation from an earlier offense, as appeared on the plea agreement; rather, he was on parole. Thus, appellant's concurrent sentences with respect to district court cases numbers C155897 and C106190 were illegal pursuant to NRS 176.035(2). The district court granted the State's motion, and re-sentenced appellant to twenty-seven (27) to sixty-eight (68) months on Count I, and twelve (12) to thirty-six (36) months on Count II to run consecutively to Count I. In re-sentencing appellant, the district court did not mention, nor in any way account for, appellant's parole violation in district court case number C106190. Appellant did not file a direct appeal.

On December 15, 1999, appellant filed a proper person motion to modify the sentence in district court case number C155897. The State did not oppose appellant's motion. On January 5, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant ostensibly contended that the modification of his sentences, from concurrent to consecutive, resulted from a clerical error made in his criminal record that operated to his extreme detriment. In substance, however, appellant objected to how the district court modified his sentence, to the modification itself. Appellant asked the district court to sentence him to two concurrent sentences of twenty-four (24) to sixty (60) months, to run consecutively to his parole violation.

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."[3] Our review of the record on appeal reveals that the district court did not err in denying appellant's claim. First, appellant's claim is outside the scope of a motion to modify a sentence. He does not complain about the clerical error in his criminal record that erroneously identified him as on probation rather than parole. Instead, he objects to how the court modified his sentence. Where a motion to modify a sentence raises issues outside of the very narrow scope of the court's inherent authority to hear such motions, the motion must be summarily denied.[4] Second, appellant should have brought his claim on

---

[3]Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

[4]Id. at 709, n.2, 918 P.2d at 325.

direct appeal.[5] Finally, upon re-sentencing appellant, the district court inquired as to what appellant wanted to do. Appellant agreed to accept the restructuring of his sentences. He thus waived any complaints regarding the sentences imposed. Appellant cannot now attempt to obtain a more favorable outcome.[6]

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.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_______________, J.
Young

_______________, J.
Agosti

_______________, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Clark County District Attorney
Johnie C. Lane
Clark County Clerk

---

[5]Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[6]To the extent that appellant claims clerical error in the amended judgment, we conclude that appellant failed to demonstrate any such error. See NRS 176.565: "Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders."

[7]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).