

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC RONNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35791

**FILED**

JUN 13 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying appellant's motion to modify his sentence.

On December 18, 1997, the district court convicted appellant, pursuant to a guilty plea, of felony driving under the influence pursuant to NRS 484.3792(1)(c), and ordered him to serve 12 to 36 months in the Nevada State Prison.<sup>1</sup> This court subsequently dismissed his direct appeal. *Ronning v. State*, 116 Nev. \_\_\_, 992 P.2d 260 (Adv. Op. No. 4, January 26, 2000) (opinion on reconsideration).

On March 3, 2000, appellant filed a motion in the district court to modify his sentence. On March 7, 2000, the district court held a hearing and denied the motion. In its order of April 3, 2000, the district court found the motion exceeded the permissible scope of a motion to modify a sentence.

Appellant contends the district court erred by denying his motion. Specifically, he asserts it is proper in

<sup>1</sup>Additionally, appellant was ordered to pay a \$25.00 administrative fee, \$60.00 drug analysis fee, and a \$2,000.00 fine.

a motion to modify a sentence to contend the district court abused its sentencing discretion. We disagree.

A district court's power 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." See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Pangallo v. State, 112 Nev. 1533, 1537 n.2, 930 P.2d 100, 102 n.2 (1996). Further, a district court has the power to modify an illegal sentence and the power to modify a sentence to correct a clerical error. See NRS 176.555; NRS 176.565.


Here, the basis of appellant's motion to modify his sentence was that the district court abused its sentencing discretion. We note appellant did not contend his sentence was based on a mistaken assumption about his criminal history. Nor did appellant contend his sentence was illegal or that there was a clerical error. Therefore, we conclude his motion exceeded the permissible scope of a motion to modify a sentence. Accordingly, the district court did not err in denying his motion.

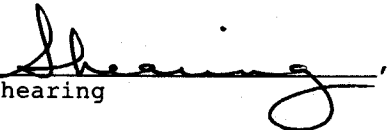
In any event, the district court did not abuse its discretion at sentencing by ordering appellant to serve a prison term rather than allowing him to enter into a diversion program. The district court properly relied on the fact that appellant had previously unsuccessfully attended a voluntary rehabilitation program in concluding that a prison term rather than diversion program was appropriate. Ordering a diversion treatment program is discretionary with the district court. See NRS 484.3794. The district court took account of appellant's relevant history with alcohol and properly


exercised its sentencing discretion.<sup>2</sup> See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987); see also Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Having concluded appellant's contentions are without merit, we

ORDER this appeal dismissed.

  
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Maupin J.

  
\_\_\_\_\_  
Shearing J.

  
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Becker J.

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Washoe County District Attorney  
Richard F. Cornell  
Washoe County Clerk

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<sup>2</sup>Appellant's criminal history indicated that, within seven years of the subject driving under the influence (DUI) conviction, he suffered a conviction for DUI in California, a DUI in Washoe County, Nevada, and a driving while impaired in Washoe County.