

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH GOTTLIEB GRASMICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36343

FILED

FEB 22 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. B. Baker*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus.

On March 26, 1982, the district court convicted appellant, pursuant to a jury verdict, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of twenty years in the Nevada State Prison. This court dismissed appellant's direct appeal. *Grasmick v. State*, Docket No. 14077 (Order Dismissing Appeal, November 30, 1983).

On October 18, 1984, appellant filed a petition for post-conviction relief in the district court. The State opposed the petition. On January 11, 1985, after appointing counsel and conducting an evidentiary hearing, the district court denied the petition. This court dismissed appellant's appeal. *Grasmick v. State*, Docket No. 16516 (Order Dismissing Appeal, November 26, 1986).

On April 3, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 1, 1996, the district court denied the petition. This court dismissed appellant's appeal. *Grasmick v. State*, Docket No. 28856 (Order Dismissing Appeal, June 22, 1998).

On May 4, 2000, appellant filed a proper person petition for a writ of mandamus in the district court. On May 4, 2000, appellant also filed a proper person motion for discovery/production and transmission of documents to petitioner. The State opposed the petition and motion. On June 2, 2000, the

district court denied appellant's petition and motion. This appeal followed.

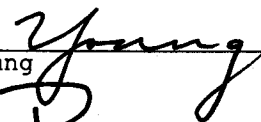
In his petition, appellant first contended that his due process rights had been violated and that his sentence was illegal. Specifically, appellant argued that the copy of the presentence report that he and his attorney received prior to sentencing was missing four pages. Appellant argued that the sentencing judge "assuredly relied" on the missing pages in sentencing appellant, thereby depriving appellant of an opportunity to rebut the "hidden information" and rendering his sentence illegal.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. First, a petition for a writ of mandamus is the improper vehicle for appellant's challenge to his sentence. See NRS 34.160; 34.170. Second, to the extent that appellant's petition may be construed to be a motion to correct an illegal sentence or a motion for modification of sentence appellant has not demonstrated that he is entitled to any relief. See *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's sentence was facially legal. See NRS 193.165; 1977 Nev. Stat., ch. 585, § 1, at 1542. Further, appellant failed to demonstrate that the district court's sentence was based upon any mistaken assumptions about appellant's criminal record. See *Edwards*, 112 Nev. at 708, 918 P.2d at 324. The district court, in denying his petition, specifically found that the presentence report was not missing any pages. Further, appellant raised the issue of the missing pages at his sentencing hearing in 1982. During the sentencing hearing, appellant's attorney represented that he believed that the problem was a matter of incorrect pagination and not a matter of an incomplete presentence report. The district court ultimately found that the presentence report was not missing any pages. Thus, the district court has twice found that the presentence report was complete. Appellant failed to demonstrate any error in the district court's imposition of sentence.

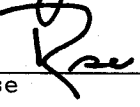
Next, appellant argued that he was being denied a copy of his presentence report and that the district court should compel the release of the presentence report to him. Appellant stated that he had requested a copy of his presentence report from "several Nevada Department of Prisons caseworkers, the Nevada Department of Parole and Probation, and the Nevada Department of Parole Commissioners" and the clerk of the district court. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition and motion. Appellant failed to demonstrate that he was entitled to the relief requested. See NRS 34.160 (providing that writ of mandamus "may be issued . . . to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station"); see generally Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971) (holding that a post-conviction petitioner must make a threshold showing of need for state-supplied trial records).

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), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.


It is so ORDERED.



Young J.



Rose J.



Becker J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Keith Gottlieb Grasmick
Clark County Clerk