IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY FRANK DENAPLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70668

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Gregory Frank Denaple appeals from an order of the district court denying a motion to modify sentence.[1] Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.
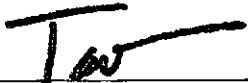
Denaple argues the district court erred in denying his April 11, 2016, motion. In his motion, Denaple claimed the State breached the guilty plea agreement by arguing for consecutive sentences. Denaple's claims fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims

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[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

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raised in the motion, we conclude the district court did not err in denying

the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

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[2]We note the district court also construed Denaple's motion as a postconviction petition for a writ of habeas corpus, and concluded it was procedurally barred pursuant to NRS 34.726(1) because it was filed almost four years after entry of the judgment of conviction on April 18, 2012, and Denaple did not demonstrate cause for his delay. However, the record clearly demonstrates Denaple sought modification of his sentence and opposed having his motion construed as a postconviction petition for a writ of habeas corpus. Under these circumstances, we conclude the district court erred in construing a permissible motion as a postconviction petition for a writ of habeas corpus. Nevertheless, we affirm. *See Wyatt v. State*, 86 Nev. 294, 468 P.2d 338, 341 (1970).

cc: Hon. Kimberly A. Wanker, District Judge
      Gregory Frank Denaple
      Attorney General/Carson City
      Nye County District Attorney
      Nye County Clerk