

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRAIG MICHAEL SCHWEITZER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69053

FILED

SEP 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to modify sentence.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Craig Michael Schweitzer claims the district court erred by denying his motion to modify sentence that was filed in the district court on August 3, 2015. In his motion, Schweitzer claimed the district court did not follow the sentence stipulated to by the parties and instead imposed an increased maximum sentence based on a mistaken assumption that Schweitzer had additional contacts with law enforcement while on bail. He asserts his Montana case originated well before the instant offense and was ultimately dismissed with prejudice.

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

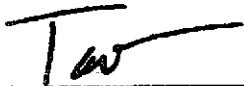
At sentencing, the district court questioned Schweitzer about a warrant that was issued for him from Montana. Schweitzer stated he thought his Montana case had been settled and he did not know why a warrant was issued in that case. He then clarified that when he was on his way to Nevada to take care of this case he was called about the Montana case. Schweitzer stated that because he was on his way to Nevada he could not appear at the Montana hearing and, although he was told he would have 45 days to pay restitution in that case, he "never heard anything" and did not receive any emails regarding that matter. When imposing sentence, the district court explained it was deviating from the sentence stipulated to by the parties and imposing a greater maximum sentence because a bench warrant was issued in this case, Schweitzer had additional contacts with the justice system, and there was an outstanding warrant from Montana.

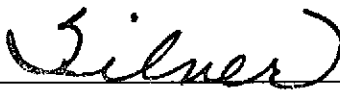
Although Schweitzer's Montana case was initiated prior to the instant offense and was ultimately dismissed, while he was on bail in this case, Schweitzer was contacted about the Montana case and a bench warrant had issued for him in that case as well as in this case. Therefore, Schweitzer failed to demonstrate 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), and we conclude the district court did not err in denying Schweitzer's motion to modify sentence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Craig Michael Schweitzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Schweitzer also attempted to appeal the resolution of his postconviction petition for a writ of habeas corpus, the appeal was premature and this court lacks jurisdiction because the district court had not finally resolved the petition, either verbally or in writing, at the time the notice of appeal was filed. See NRS 34.575(1); NRAP 4(b)(2). Therefore, to the extent Schweitzer is appealing from the resolution of his postconviction petition for a writ of habeas corpus, the appeal is dismissed.