IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD LEE HAYES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36474

FILED

FEB 22 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

RONALD LEE HAYES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36475

ORDER OF AFFIRMANCE

These are proper person appeals from an order of the district court denying appellant's motion for a new trial, and appellant's motion for sentence modification.

On August 27, 1999, the district court convicted appellant, pursuant to pleas of guilty, of two counts of burglary in district court case no. C155957, and one count of burglary in district court case no. C161198. The district court sentenced appellant to serve two consecutive terms of a maximum term of seventy-two months to a minimum term of sixteen months in the Nevada State Prison for district court case no. C155957, and a maximum term of sixty months to a minimum term of twenty-four months in the Nevada State Prison in district court case no. C161198, to run concurrently to case no. C155957.

On June 15, 2000, appellant filed a proper person motion for a new trial and a proper person motion for modification of sentence in both district court cases. The State opposed both motions. On June 30, 2000, the district court denied both of appellant's motions. These appeals followed.

In his motion for a new trial, appellant contended that his motion was based on newly discovered evidence. Appellant argued that "42 U.S.C. § 2000a-2(c) prohibits the

prosecution of appellant under NRS 205.060 [burglary with intent] for entries made into establishments and places that were open to the general public at the time, irrespective of ascribed intent."

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. A motion for a new trial is the proper motion only where a defendant has had a trial and has been convicted pursuant to a jury verdict; appellant was convicted pursuant to a guilty plea, thus, the proper remedy was a motion to withdraw guilty plea.[1] Moreover, appellant's contention is one that could have been made prior to judgment and thus is not newly discovered evidence.[2] Therefore, the district court did not err in denying appellant's motion.

In his motion to modify sentence, appellant requested that the district court be lenient with appellant and that the district court modify his sentence because appellant is middle-aged, has two children, a mother sick with cancer, and because appellant desired to salvage "what's left of my life."

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. 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] There is no indication in the record that the district court relied on mistaken assumptions about appellant's criminal record.

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[1]See NRS 176.515; NRS 176.165; see generally, Hargrove v. State, 100 Nev. 498, 501, 686 P.2d 222, 224 (1984) (stating that a motion to withdraw guilty plea and a motion for a new trial both serve identical functions: the motion for new trial challenges a conviction predicated upon a verdict, and the motion for withdrawal of guilty plea challenges a conviction predicated upon a guilty plea).

[2]See Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991) (holding that to establish a basis for a new trial on this ground, the evidence must be: newly discovered, material to the defense, and such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial) (emphasis added).

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

Therefore, the district court did not err in denying appellant's motion.

Having reviewed the records 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.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

Young, J.

Rose, J.

Becker, J.

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Ronald Lee Hayes
Clark County Clerk

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

[5]We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.