

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK R. ESPOSITO,

No. 36745

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

FEB 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion to modify his sentence. Appellant was convicted, pursuant to a guilty plea, of two counts of trafficking in a controlled substance. The district court sentenced appellant to two concurrent terms of sixteen months to seventy-two months in the Nevada State Prison, and a fine of \$25,000 for each count.

After sentencing, appellant moved to modify his sentence, arguing that the district court erred by considering several misstatements of fact contained in appellant's presentence report, which influenced the sentence imposed on appellant.

A motion to modify a sentence may be granted only on "very narrow due process grounds" and where the sentence "is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant, but only if the mistaken sentence 'is the result of the sentencing judge's misapprehension of a defendant's criminal record.'"¹ Moreover, this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."² We conclude that the district court

¹Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) (emphasis omitted) (quoting State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984)).

²Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

did not err in denying appellant's motion to modify his sentence. In its order, the district court found that the errors which appellant alleges were not considered by the district court in imposing sentence. Therefore, appellant has not established that his sentence was based on materially untrue assumptions or mistakes of fact that worked to his extreme detriment, or that the district court relied on impalpable or highly suspect evidence. Further, we note that the sentence imposed was within the parameters provided by the relevant statute.³

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Rose J.
Rose
Becker J.
Becker

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Carmine J. Colucci & Associates
Clark County Clerk

³See NRS 453.3385. We note that the judgment of conviction states that appellant was convicted under NRS 453.3384, however there is no such statute. Trafficking in a controlled substance is governed by NRS 453.3385.