

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKY NOLAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76572-COA

FILED

AUG 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ricky Nolan appeals from an order of the district court denying a petition requesting genetic marker analysis and a motion to modify or correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Petition requesting genetic marker analysis

In his March 28, 2018, petition and later-filed supporting documents, Nolan sought genetic marker testing of evidence collected from the victim in this case. Nolan asserted sexual assault kits must be tested

¹To the extent Nolan attempts to raise challenges regarding a different criminal matter, such issues are not within the scope of this appeal, *see* NRAP 3(c)(1), and we decline to consider those issues.

We have reviewed Nolan's March 21, 2019, motion for clarification or intervention, and all other documents filed in this appeal, and we conclude no relief is warranted.

within 120 days, the victim did not properly identify him, and new DNA testing techniques may reveal beneficial information. Nolan also contended he wished to exhaust state remedies regarding this issue.

However, the Nevada Supreme Court has already noted “the amount of biological evidence collected was too small for testing to develop a DNA profile,” and “there was overwhelming evidence of [Nolan’s] guilt” presented at trial even without DNA evidence. *Nolan v. State*, Docket No. 50241 (Order of Affirmance and Limited Remand to Correct the Amended Judgment of Conviction, March 24, 2009). The Nevada Supreme Court explained the evidence of Nolan’s guilt included witness’ testimonies stating they saw Nolan follow the victim out of a bar, Nolan’s admission that he had sex with the victim and left her where she was later found in an injured state, and Nolan’s use of the victim’s credit card at several businesses after their encounter. *Id.*

Because overwhelming evidence of Nolan’s guilt was presented at trial, Nolan did not articulate a reasonable possibility he would not have been prosecuted or convicted had a genetic marker analysis been done and exculpatory results obtained. See NRS 176.0918(3)(b). Accordingly, we conclude the district court did not err by denying the petition. See NRS 176.0918(4)(a).

Motion to Modify or Correct an Illegal Sentence

In his May 15, 2018, motion and additional supporting documents, Nolan first argued the sentencing court improperly based its

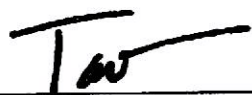
sentencing decision upon false information contained in the presentence investigation report concerning an arrest for misdemeanor possession of a firearm and misdemeanor possession of an illegal firearm. Nolan contended he was never arrested, tried or convicted for those offenses and, therefore, the sentencing court should not have considered that information. Nolan failed to demonstrate the sentencing 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). During the sentencing hearing, the sentencing court made no reference to the challenged firearm charges. Rather, when imposing sentence the sentencing court referred to the victim's injuries and the sexual assault she suffered, and expressed hope the victim would receive more funds for counseling than is normally provided due to the nature of the crime. Because the district court did not reference the challenged firearm charges, Nolan failed to demonstrate any mistaken assumptions concerning those charges worked to his extreme detriment. In addition, Nolan failed to demonstrate that his sentence was facially illegal or the sentencing court lacked jurisdiction. See *id.* Therefore, the district court did not err by denying this claim.

Second, Nolan argued the sentencing court should not have imposed sentence without requiring him to undergo a psychosexual evaluation and he also asserted he needed to exhaust state remedies. In addition, Nolan appeared to assert genetic marker analysis would

demonstrate his innocence. These claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See id.* Therefore, without considering the merits these claims, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Nolan argues the district court erred by entering a written order resolving his petition and motion 30 days after the oral pronouncement of its decision to deny relief. *See* NRAP 4(b)(5)(B) (stating a written order resolving a postconviction matter shall be entered within 21 days of the district court's oral pronouncement of a final decision on the matter). Nolan also argues the district court failed to include specific findings of fact and conclusions of law in its order. Because the district court properly denied Nolan's petition and motion, the untimely entry of the district court's order and any lack of specificity in the order were harmless errors. *See* NRS 177.255 (stating "[a]fter hearing the appeal, the Court shall give judgment without regard to technical error or defect which does not affect the substantial rights of the parties); NRS 178.598 (stating "[a]ny error, defect, irregularity or variance which does not affect" a party's "substantial rights shall be disregarded").

cc: Hon. Stefany Miley, District Judge
Ricky Nolan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk