IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY JACOBS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37224

FILED

FEB 15 2002

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to modify sentence.

On December 6, 1991, the district court convicted appellant, pursuant to a jury verdict, of three counts of possession of a trafficking quantity of a controlled substance, two counts of sale of a trafficking quantity of a controlled substance, two counts of unlawful sale of a controlled substance, two counts of possession of a controlled substance for the purpose of sale, and two counts of possession of a controlled substance. The district court sentenced appellant to serve terms totaling thirty-five years.

On direct appeal from his judgment of conviction, this court reversed as cumulative eight of appellant's convictions.[1] This court further vacated appellant's remaining sentences and remanded appellant's case to the district court for resentencing on two counts of sale of a trafficking quantity of a controlled substance and one count of possession of a trafficking quantity of a controlled substance.

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[1]Jacobs v. State, Docket No. 22911 (Order of Remand, September 28, 1994).

Pursuant to this court's order of remand, the district court entered a judgment of conviction on December 8, 1994, for two counts of sale of a trafficking quantity of a controlled substance and one count of possession of a trafficking quantity of a controlled substance. The district court sentenced appellant to serve two concurrent terms of ten years for the sale offenses and one term of twenty-five years for the possession offense, the latter to be served consecutively to the former. On July 30, 1996, the district court entered a corrected judgment of conviction to provide appellant with additional credit for time served. On July 20, 1999, the district court entered an order awarding additional credit for time served pursuant to a stipulation by the parties.

On November 8, 2000, appellant filed a motion to modify sentence. On November 27, 2000, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that pursuant to Sparkman v. State[2], NRS 453.341 requires that the district court modify his sentence to comport with the 1995 and 1997 amendments to NRS 453.3385. Appellant claimed that failure to do so denied him due process and equal protection of the laws. Appellant also claimed that his sentences amounted to cruel and unusual punishment. Appellant argued that he should receive an immediate parole hearing.

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] Our review of the record on

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[2]95 Nev. 76, 590 P.2d 151 (1979).

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

appeal reveals that the district court did not err in denying appellant's motion because his claim fell outside the narrow scope of claims permissible in a motion to modify a sentence. Appellant did not argue that the district court relied on any mistaken assumptions about his criminal record in sentencing appellant.

Moreover, as a separate and independent ground for denial, appellant's claim lacked merit. Former NRS 453.3385(2) required the district court to sentence appellant to a term of either life or a definite term of not less than ten years.[4] Former NRS 453.3385(3) required the district court to sentence appellant to a term of either life or a definite term of not less than twenty-five years.[5] When the legislature amended NRS 453.3385 and reduced the statutory penalties in 1995, it clearly stated that the amendments do not apply to offenses committed before July 1, 1995.[6] Therefore, the district court correctly determined that there was no basis for modification of the sentence.

In addition, appellant's reliance on Sparkman and NRS 453.341 is misplaced. Unlike Sparkman, appellant committed the offense and was sentenced prior to the 1995 amendments to NRS 453.3385. In addition, unlike the amendments at issue in Sparkman, the legislature expressly stated that the amendments to NRS 453.3385 do not apply to

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[4]1983 Nev. Stat., ch. 111, § 2, at 287.

[5]Id.

[6]1995 Nev. Stat., ch. 443, §§ 296, 393, at 1288, 1340. We note that the 1997 amendments did not alter the statutory penalties for offenses under NRS 453.3385. 1997 Nev. Stat., ch. 256, § 5, at 905.

offenses committed before July 1, 1995.[7] Accordingly, we conclude that the specific statements of legislative intent control over the more general language of NRS 453.341 that provided the basis for our decision in Sparkman. The district court properly determined that appellant was not entitled to the relief requested.

Having reviewed the record 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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Johnny Jacobs
Washoe District Court Clerk

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[7]Compare 1977 Nev. Stat., ch. 567, §§1-17, at 1407-17 with 1995 Nev. Stat., ch. 443, §§ 393, at 1340.

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