

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIKE RUIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39164

FILED

NOV 06 2002

ORDER OF AFFIRMANCE

REC'D & FILED
CLERK OF SUPREME COURT
BY *Richard*
DEPUTY CLERK

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

On September 29, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon. The district court sentenced appellant to serve a term of thirty to one hundred and twenty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed five years. On September 21, 1999, the district court entered an order revoking appellant's probation and modifying appellant's sentence to a term of twenty-four months to one hundred and twenty months in the Nevada State Prison. No appeal was taken.

On November 28, 2001, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. On April 2, 2002, the district court entered an order denying the motion. This appeal followed.

In his motion, appellant claimed that he should be reinstated to probation because false or unproven information was presented at his probation revocation hearing. Appellant claimed that the district court relied on a police report that he was intoxicated when he was arrested while on probation, when in fact no tests were ever conducted regarding his intoxication.¹ Appellant claimed that the district court erroneously relied upon this information in revoking his probation. Appellant relied upon NRS 176A.450 for the district court's authority to modify his sentence.

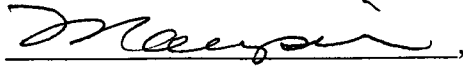
We conclude that the district court did not err in denying appellant's motion. NRS 176A.450 does not provide the district court the authority to modify a sentence of imprisonment that appellant has already begun to serve. Rather NRS 176A.450 permits the district court to modify any conditions of probation or suspension of sentence. Because appellant's probation was revoked in 1999, the district court correctly determined that it was without authority to modify appellant's sentence pursuant to NRS 176A.450. Appellant further failed to demonstrate that his sentence was based upon a mistaken assumption of fact about his criminal record that worked to his extreme detriment.² Therefore, we affirm the order of the district court denying appellant's motion.

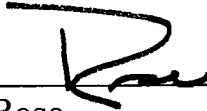
¹In his motion, appellant denied that he was intoxicated.

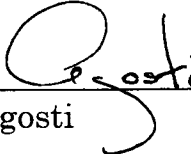
²Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Maupin


_____, J.
Rose


_____, J.
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Mike Ruiz
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.