

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTT HARAMI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40053

FILED

JUN 05 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Robert Scott Harami's motion to correct an illegal sentence.

On June 24, 1994, Harami was convicted, pursuant to a guilty plea, of one count of robbery. The district court sentenced Harami to serve a prison term of 12 years, and ordered the sentence to run consecutively to the sentence imposed in district court case no. C113705. Harami's untimely direct appeal from the judgment of conviction was dismissed by this court for lack of jurisdiction.¹

On June 1, 1995, Harami filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, Harami contended that his guilty plea was not entered knowingly and voluntarily, and that: (1) counsel failed to properly advise him about his appellate rights; (2) counsel misadvised him about the possible sentence; (3) misinformed him that his two district court cases would be consolidated; and (4) prejudicial evidence was improperly introduced at the sentencing hearing. The State opposed the petition. Pursuant to NRS

¹Harami v. State, Docket No. 27818 (Order Dismissing Appeal, February 22, 1996).

34.750 and NRS 34.770, the district court declined to appoint counsel to represent Harami or conduct an evidentiary hearing. On August 30, 1995, the district court denied Harami's petition. On appeal, this court affirmed the district court's order.²

On March 23, 2000, Harami filed another proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that it was untimely and successive; the State also specifically pleaded laches. Harami filed a response to the State's opposition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Harami or conduct an evidentiary hearing. On September 27, 2000, the district court denied Harami's petition. On appeal, this court affirmed the district court's order.³

On July 3, 2002, Harami filed a proper person motion to correct an illegal sentence, or in the alternative, modify his sentence. The State opposed the motion. On July 17, 2002, without conducting an evidentiary hearing, the district court denied Harami's motion. This timely appeal followed.

In his motion, Harami contended that the district court was improperly influenced at sentencing by: (1) errors in the presentence investigation report regarding the validity of Harami's prior convictions; and (2) prejudicial evidence introduced by the State. Harami requested

²Harami v. State, Docket No. 27662 (Order Dismissing Appeals, June 3, 1998) (consolidated with an appeal docketed in this court as Docket No. 27663).

³Harami v. State, Docket No. 36864 (Order of Affirmance, December 10, 2001).

that the district court either vacate his illegal sentence and order a new sentencing hearing, or modify his sentence to run concurrently with the sentence imposed in district court case no. C113705.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.⁴ “A motion to correct an illegal sentence “presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.”⁵ “[S]uch a motion cannot . . . be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing.”⁶ 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.”⁷ A motion to correct or modify a sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁸

Based upon our review of the record on appeal, we conclude that the district court did not err in denying Harami’s motion. Harami’s sentence was facially legal, and there is no indication that the district

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶Id.

⁷Id. at 708, 918 P.2d at 324.

⁸Id. at 708-09 n.2, 918 P.2d at 325 n.2.

court was without jurisdiction.⁹ The arguments raised by Harami in his motion fall outside the scope of issues permissible in a motion to correct an illegal sentence.

Harami's claim that his sentence was based on a mistaken assumption about his criminal record, however, was properly raised in the alternative as motion to modify his sentence. Harami contended that the presentence report prepared by the Division of Parole and Probation erroneously stated that he had three prior felony convictions rather than just one because "the State failed to prove the validity of the alleged prior convictions." Harami specifically took issue with the court's consideration of his felony convictions occurring in 1970 and 1972 in New York when he was a juvenile, and in 1982 in California.¹⁰ Harami also argued that his felony robbery conviction in district court case no. C113705 should not have been considered because it "was not final due to collateral review procedures." Nevertheless, we cannot conclude that "the district court actually sentenced [Harami] based on a materially false assumption of fact that worked to [his] extreme detriment."¹¹ Along with the convictions listed above, the presentence report also noted Harami's twenty-three prior arrests, four misdemeanor convictions, and a revoked term of probation. Our review of the sentencing hearing transcript reveals that Harami did not object to the information presented in the presentence

⁹See 1967 Nev. Stat., ch. 211, § 59, at 470-71 (defining and imposing penalties for robbery).

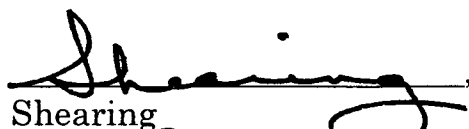
¹⁰According to the presentence report, the challenged convictions involved possession of dangerous drugs and two separate incidents of robbery.


¹¹Passanisi v. State, 108 Nev. 318, 323, 831 P.2d 1371, 1374 (1992).

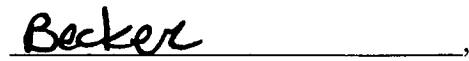
report, and that the district court based its sentencing decision on the totality of Harami's criminal history and the severity of the instant crime. We also note that it was within the district court's discretion to impose a consecutive sentence.¹² Therefore, we conclude that Harami's sentence was not the result of a misapprehension of his criminal record.¹³

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Harami is not entitled to relief and that briefing and oral argument are unwarranted.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Lee A. Gates, District Judge
Robert Scott Harami
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹²See NRS 176.035 (1); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

¹³See State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).

¹⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).