

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE DE JESUS HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40346

FILED

SEP 04 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying a motion to modify a sentence.

On January 17, 2001, appellant Jose Hernandez was convicted by the district court, pursuant to a guilty plea, of four counts of trafficking in a controlled substance (level II), in violation of NRS 453.3385. The district court sentenced Hernandez to serve a term of 60 months in the Nevada State Prison with the possibility of parole in 24 months on each of the four counts. The terms of imprisonment for counts one through three were imposed to run consecutively with each other; the term of imprisonment for count four was imposed to run concurrently with count three. No direct appeal was taken.

On August 28, 2002, Hernandez filed a motion to modify his sentence in the district court. The State opposed the motion. On September 27, 2002, the district court denied Hernandez's motion. This appeal followed.

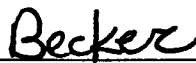
In his motion, Hernandez contended that the district court relied upon a materially untrue assumption—that it had little discretion in determining what sentence to impose on Hernandez—before sentencing him. Specifically, Hernandez cited to the following statement that the district court made at his sentencing hearing: "Well, I suppose that both sides will feel that this is a harsh sentence, but the sale of drugs, illicit


drugs has become such a problem that the judge is left with very little discretion in terms of sentence."

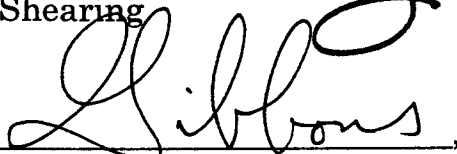
A motion to modify a sentence "is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment."¹ Our review of the record reveals that Hernandez's motion fell outside of the narrow scope of permissible claims. Hernandez did not argue that the district court relied on any mistaken assumptions about his criminal record in sentencing him. Therefore, we conclude that the district court did not err in summarily denying Hernandez's motion.²

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hernandez 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


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

²See id. at 708-09 n.2, 918 P.2d at 325 n.2.

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.

cc: Hon. John M. Iroz, District Judge
Jose De Jesus Hernandez
Attorney General Brian Sandoval/Carson City
Humboldt County District Attorney
Humboldt County Clerk