

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY BRYANT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40522

FILED

OCT 15 2003

ORDER OF AFFIRMANCE

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

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

In January 1992, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to commit grand larceny and grand larceny. The district court sentenced appellant to serve a term of one year in the Clark County Detention Center for the conspiracy count. The district court adjudicated appellant a habitual criminal for the grand larceny count and sentenced appellant to serve a term of eighteen years in the Nevada State Prison. The district court imposed the sentences to run concurrently. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on November 23, 1993.

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<sup>1</sup>Bryant v. State, Docket No. 22947 (Order Dismissing Appeal, November 3, 1993).

On April 14, 1999, appellant filed a proper person motion to modify a sentence in the district court. The State opposed the motion. On May 13, 1999, the district court denied appellant's motion. No appeal was taken.

On October 14, 2002, appellant filed a motion to modify and correct an illegal sentence in the district court. The State opposed the motion. On December 12, 2002, the district court denied the motion. This appeal followed.

In his motion, appellant contended that the State violated his due process rights by failing to amend the information to include notice that the State was seeking habitual criminal adjudication. Appellant further claimed that the district court failed to determine that it was "just and proper" to adjudicate appellant a habitual criminal.

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.<sup>2</sup> "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

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

of sentence."<sup>3</sup> 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."<sup>4</sup> A motion to modify and correct an illegal sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>5</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant's claims fell outside the very narrow scope of claims permissible in a motion to modify and/or correct an illegal sentence. Appellant's sentence was facially legal and there is no indication that the district court was without jurisdiction in this matter.<sup>6</sup> Appellant further failed to demonstrate that his sentence was based upon a mistake about his criminal record that worked to his extreme detriment. We note that the State did provide timely notice of its intention to seek habitual criminal adjudication.<sup>7</sup> Therefore, we affirm the order of the district court.

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<sup>3</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

<sup>4</sup>Id.

<sup>5</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

<sup>6</sup>See NRS 193.140; 1983 Nev. Stat., ch. 525, § 1, at 1494 (NRS 199.480); 1985 Nev. Stat., ch. 544, § 1, at 1643 (NRS 207.010(1)).

<sup>7</sup>See 1985 Nev. Stat., ch. 544, § 1, at 1644 (NRS 207.010(4)(5)).

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

Becker \_\_\_\_\_, J.  
Becker

Shearing \_\_\_\_\_, J.  
Shearing

Gibbons \_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Danny Bryant  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.