

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KENNETH MIZE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40558

**FILED**

OCT 28 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 James Mize's motion to modify and correct his sentence, and motion for the appointment of counsel.

On November 18, 1993, the district court convicted Mize, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon. The district court sentenced Mize to serve a term of nine years in the Nevada State Prison, plus an equal and consecutive term of nine years as a deadly weapon enhancement. This court affirmed Mize's conviction on direct appeal.<sup>1</sup>

On May 16, 2001, Mize filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied Mize's petition as being untimely. This court affirmed the district court's denial of Mize's petition on appeal.<sup>2</sup>

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<sup>1</sup>Mize v. State, Docket No. 25193 (Order Dismissing Appeal, December 19, 1994).

<sup>2</sup>Mize v. State, Docket No. 38275 (Order of Affirmance, May 31, 2002).

On July 11, 2002, Mize filed a proper person motion to modify and correct his sentence, and a motion for the appointment of counsel. The State opposed these motions. Mize filed a reply. On September 25, 2002, the district court issued an order denying Mize's motions. This appeal followed.<sup>3</sup>

In his motion, Mize moved the district court to modify his sentence. Specifically, Mize alleged that his pre-sentence investigation report ("PSI") contained erroneous factual information that was improperly relied upon by the district court at his sentencing 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."<sup>4</sup> Issues raised outside the very narrow scope of permissible issues in a motion to modify a sentence may be summarily denied.<sup>5</sup>

Our review of the record reveals that the district court did not base Mize's sentence upon mistaken assumptions of any erroneous factual information contained in Mize's PSI that worked to his extreme detriment. Rather, before imposing Mize's sentence, the district court indicated that it considered Mize's crime "real serious" due to the fact that Mize had fired gunshots while fleeing from the robbery scene, one of which struck a vehicle. We note that the district court presided over Mize's entire trial, having a full opportunity to understand the facts supporting Mize's

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<sup>3</sup>We conclude that the district court did not abuse its discretion when it denied Mize's motion for the appointment of counsel.

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

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

conviction. The district court's factual understanding of Mize's case was supported by trial testimony, irrespective of the facts in his PSI. Therefore, we conclude that the district court properly denied Mize's motion to modify his sentence.

In his motion, Mize also moved the district court to correct his sentence. NRS 176.555 provides that a district court may correct an illegal sentence at anytime. A motion to correct an illegal sentence, however, 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>6</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 of sentence.'"<sup>7</sup>

Our review of the record reveals that Mize was convicted of robbery with the use of a deadly weapon on November 18, 1993. Thereafter, the district court sentenced Mize to serve a term of nine years in prison, plus an equal and consecutive term of nine years for the use of a deadly weapon. In 1993, NRS 200.380(2) provided that a person who is convicted of robbery faced a minimum term of one year and a maximum term of fifteen years in prison. NRS 193.165(1) provided that a person who uses a deadly weapon in the commission of a crime faces an equal and consecutive sentence to the underlying offense. As Mize's sentence was within the permissible statutory range, and Mize does not raise any

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<sup>6</sup>Id. at 708, 918 P.2d at 324.

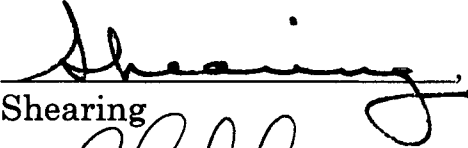
<sup>7</sup>Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

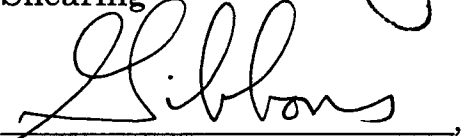
jurisdictional challenges, we conclude that his sentence was facially legal and the district court properly denied his motion on this ground as well.

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>

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

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

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

cc: Hon. Kathy A. Hardcastle, District Judge  
James Kenneth Mize  
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.