

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE O'CONNOR BEARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40871

FILED

DEC 03 2003

ORDER OF AFFIRMANCE

JAMETTE 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 a motion to vacate or modify an illegal sentence.

On May 19, 1998, the district court convicted appellant, pursuant to a jury verdict, of unlawful trafficking in a controlled substance (count I), unlawful possession of a controlled substance for purpose of sale (count II), felony abuse and neglect of a child (count III), gross misdemeanor abuse and neglect of a child (count IV), and two counts of being an ex-felon in possession of a firearm (counts VI and VII). The district court sentenced appellant to serve multiple consecutive and concurrent terms in the Nevada State Prison. On appeal, this court reversed appellant's convictions for counts I, III, and IV.¹ The remittitur issued on March 7, 2002.

On March 19, 2002, appellant filed a motion to amend the judgment of conviction, arguing that his three remaining sentences should

¹Beard v. State, Docket No. 32560 (Order Reversing in Part and Affirming in Part, August 16, 1999).

run concurrently. The district court entered an amended judgment of conviction on March 21, 2002.² Appellant was sentenced to a term of 19 to 48 months for count II, and terms of 28 to 72 months for counts VI and VII. The sentences for counts VI and VII were imposed to run concurrently to each other, and consecutively to count II.

Beard appealed the amended judgment of conviction, arguing that the district court violated his double jeopardy rights by increasing his sentences after he had begun serving them. He claimed that it was error for the court to impose consecutive sentences when his original sentences for these convictions were imposed to run concurrently. This court affirmed the amended judgment of conviction.³ This court subsequently denied a petition for rehearing,⁴ and a petition for en banc reconsideration.⁵

²On May 9, 2002, the district court entered a second amended judgment of conviction, correcting a mistake concerning the sentence for count VII. On June 27, 2002, the district court entered a third amended judgment of conviction, providing that appellant receive 155 days credit for pre-sentence incarceration.

³Beard v. State, Docket No. 39738 (Order of Affirmance, November 5, 2002).

⁴Beard v. State, Docket No. 39738 (Order Denying Rehearing, December 4, 2002).

⁵Beard v. State, Docket No. 39738 (Order Denying En Banc Reconsideration, February 20, 2003).

On September 27, 2002, appellant filed a proper person motion to vacate and modify an illegal sentence in the district court.⁶ On January 6, 2003, the district court denied appellant's motion. This appeal followed.

In his motion, appellant made various claims concerning the illegality of his current sentence, and requested that his sentence be modified.⁷ 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."⁸ A motion to modify a sentence that raises issues outside the very narrow scope of permissible issues may be summarily denied.⁹

Appellant first alleged that the district court erred when it re-sentenced him on the basis of inaccurate information. Specifically, appellant argued that the district court re-sentenced him without including all of his time served, including "good time," "work time," and "meritorious time" credits. Our review of the record on appeal reveals that

⁶Appellant filed a substantially similar amended motion to vacate and modify an illegal sentence on October 31, 2002.

⁷To the extent that appellant's motion may be construed as a motion to correct an illegal sentence, we find that his claims fall outside the very narrow scope of permissible claims. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

⁸Id. at 708, 918 P.2d at 324.

⁹Id. at 708-09 n.2, 918 P.2d at 325 n.2.

the district court did not err in denying this claim. The director of the department of corrections is responsible for the allocation of "good time," "meritorious time," and "work time" credits.¹⁰ The board of state prison commissioners is responsible for adopting regulations that govern the award, forfeiture, and restoration of credits.¹¹ The grant and calculation of credits earned in prison is consequently the duty of the department of corrections, not the district court. Furthermore, the judgment of conviction is not required to contain credits earned in prison not related to the time spent in actual confinement.¹² Therefore, appellant failed to demonstrate that the district court relied upon any mistaken assumptions about appellant's criminal record that worked to his extreme detriment and we affirm the order of the district court on this issue.

Appellant next claimed that he was re-sentenced to a greater period of time than his original sentence, in violation of his due process, equal protection, and double jeopardy rights. Our review of the record on appeal reveals that the district court did not err in denying this claim. On direct appeal from his amended judgment of conviction, this court considered and rejected appellant's claim that his sentence was increased after he began serving it. Additionally, this court rejected a petition for rehearing and petition for en banc reconsideration on this same issue. The

¹⁰See NRS 209.4465.


¹¹See NRS 209.4465(6).

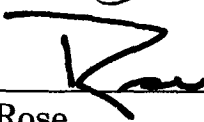
¹²See NRS 176.105(d).


doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."¹³ Appellant failed to demonstrate that the district court relied upon any mistaken assumption about his criminal record that worked to his extreme detriment and we affirm the order of the district court on this issue.

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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

¹³Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

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

cc: Hon. John P. Davis, District Judge
George O'Conner Beard
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk