

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEE DAVIDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41212

FILED

AUG 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Lee Davidson's proper person motion for modification of his sentence.

On October 8, 2002, Davidson was convicted, pursuant to a guilty plea, of one felony count of coercion. The district court sentenced Davidson to serve a prison term of 28-72 months to run concurrently with his sentence in district court case no. C185784. Davidson did not pursue a direct appeal from the judgment of conviction.

On February 14, 2003, Davidson filed a proper person motion for modification of his sentence in the district court. In his motion, Davidson argued that the district court erred at sentencing by considering a presentence investigation report (PSI) prepared by the Division of Parole and Probation for the instant case rather than, as stipulated, the PSI prepared for district court case no. C185784.¹ On March 10, 2003, the

¹Pursuant to NRS 176.135(3)(b), a PSI must be prepared prior to the sentencing for a felony offense unless "[s]uch an investigation and report on the defendant has been made by the division within the 5 years immediately preceding the date initially set for sentencing on the most recent offense."

district court conducted a hearing and denied Davidson's motion. This timely appeal followed.²

Davidson contends that the district court abused its discretion at sentencing when it violated the stipulation between the parties that the district court should consider the PSI prepared for an unrelated case in the instant case. Davidson argues that he was prejudiced by the district court's mistake in considering the allegedly wrong PSI by the imposition of a harsher sentence. We disagree with Davidson's contention.

Generally, a district court lacks jurisdiction to modify a sentence after the defendant begins to serve it.³ An exception to this rule applies when the court made a mistake in rendering a judgment that worked to the extreme detriment of the defendant; however, this exception only applies if the error concerned the defendant's criminal record.⁴ Therefore, a motion to modify a sentence may be granted only on "very narrow due process grounds."⁵ Further, a motion to modify a sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁶

²Defense counsel was present at the hearing below and represents Davidson on appeal.

³See Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992).

⁴See Edwards v. State, 112 Nev. 704, 707-08, 918 P.2d 321, 324 (1996); State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).

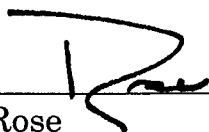
⁵Edwards, 112 Nev. at 707, 918 P.2d at 324.


⁶Id. at 708-09 n.2, 918 P.2d at 325 n.2.

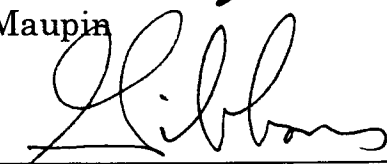
We conclude that the district court did not abuse its discretion in denying Davidson's motion. Davidson fails to allege, let alone establish, that the district court erred at sentencing with regard to his criminal record. Therefore, Davidson's contention falls outside the scope of issues permissible in a motion for modification. We further note that at the hearing on Davidson's motion, the district court stated that information regarding Davidson's criminal history would have been identical in the two PSIs, and that the district court relied on the PSI only for an understanding of the facts of the instant offense, stating, "And I don't think that you're trying to say that I was supposed to sentence you blind without knowing anything at all about the offense." Counsel for Davidson subsequently informed the district court that at the time he explained to Davidson that there was no tactical advantage to using the PSI from the earlier case, and that the stipulation to use that PSI was based solely on the desire to expedite his sentencing.

Therefore, having considered Davidson's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk