

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK A. MANNING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41368

**FILED**

FEB 11 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOCK  
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 Mark Manning's motion for sentence modification.

On May 24, 1988, the district court convicted Manning, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced Manning to serve a total of thirty years in the Nevada State Prison. No direct appeal was taken.

On March 28, 1989, Manning filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On April 13, 1989, the district court summarily dismissed Manning's petition. This court vacated the order of the district court and remanded the matter to the district court for further proceedings.<sup>1</sup>

On March 16, 1990, Manning filed a post-conviction petition for a writ of habeas corpus with the assistance of appointed counsel. After conducting an evidentiary hearing, the district court denied Manning's petition. This court affirmed the order of the district court.<sup>2</sup>

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<sup>1</sup>Manning v. State, Docket No. 20139 (Order of Remand, November 22, 1989).

<sup>2</sup>Manning v. State, 107 Nev. 337, 810 P.2d 1216 (1991).

On September 6, 1991, Manning filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On September 30, 1991, the district court denied Manning's petition. This court dismissed Manning's subsequent appeal.<sup>3</sup>

On December 30, 1993, Manning filed a motion to correct an illegal judgment in the district court. On February 15, 1994, the district court denied Manning's motion. This court dismissed Manning's subsequent appeal.<sup>4</sup>

On February 24, 2003, Manning filed a proper person motion for sentence modification in the district court. The State opposed the motion. On March 21, 2003, the district court denied Manning's motion. This appeal followed.

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>5</sup> A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.<sup>6</sup>

In his motion, Manning first claimed that his sentence should be modified due to changes in parole guidelines that occurred after he was sentenced. Manning contended that the district attorney stated at

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<sup>3</sup>Manning v. State, Docket No. 22922 (Order Dismissing Appeal, March 25, 1992).

<sup>4</sup>Manning v. State, Docket No. 25714 (Order Dismissing Appeal, July 8, 1994).

<sup>5</sup>Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>6</sup>Id. at 708-09 n.2, 918 P.2d at 325 n.2.

sentencing that Manning would "only do seven or eight years with good behavior." Although this was true at the time, increasingly stringent parole guidelines have resulted in longer incarceration time. Therefore, Manning argued, the district court's sentence was based on information that is no longer accurate.

Manning's claim that his sentence should be modified due to changes in parole guidelines falls outside the scope of a motion for sentence modification. Even if parole guidelines were subsequently changed and became stricter, Manning failed to establish that his sentence was based on a mistaken assumption concerning his criminal record. Therefore, the district court did not err in denying this claim.

Manning next contended that his sentence should be modified because he has rehabilitated himself in prison through vocational training, substance abuse counseling, and spiritual development. Although Manning's progress in prison is commendable, this issue is not appropriately raised in a motion for sentence modification. Accordingly, we affirm the order of the district court in this regard.

Lastly, Manning asserted that his sentence should be modified because the firearm used to enhance his sentence was a toy BB gun. This court has already considered the issue of Manning's weapon enhancement, however, and the doctrine of the law of the case prevents further litigation of this issue.<sup>7</sup> Additionally, this claim falls outside the scope of a motion for sentence modification. Therefore, we affirm the order of the district court on this issue.

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<sup>7</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge  
Mark A. Manning  
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).