

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN D. DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41633

FILED

MAY 27 2004

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 Alan Daniels' motion for sentence modification.

On May 28, 2002, the district court convicted Daniels, pursuant to a guilty plea, of burglary while in possession of a firearm and robbery. The district court sentenced Daniels to serve two concurrent terms of 35 to 180 months in the Nevada State Prison. This sentence was imposed to run consecutively to Daniels' sentence in district court case no. C160684. No direct appeal was taken.

On May 9, 2003, Daniels filed a proper person motion for sentence modification in the district court. The State opposed the motion. Daniels filed a reply. On July 21, 2003, the district court denied Daniels' 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."¹ A motion to modify a sentence that raises issues outside the very narrow scope of permissible issues may be summarily denied.²

¹Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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

In his motion, Daniels claimed that his pre-sentence investigation report (PSI) contained errors. Daniels alleged that his PSI incorrectly concluded that he had a problem with alcohol and controlled substances. Further, the PSI inaccurately stated, "it appears most likely that [Daniels] has been involved in numerous robberies in addition to those robberies for which he has been convicted."

We conclude that Daniels failed to demonstrate that the district court relied on mistaken assumptions about his criminal record that worked to his extreme detriment. Daniels did not argue that the PSI contained inaccurate information with respect to his prior convictions. Daniels' claim concerning his alcohol and controlled substance use is outside the scope of a motion to modify a sentence because it does not concern his criminal record. Further, there is nothing in the record to suggest that the district court relied on the PSI's representation that Daniels committed additional robberies for which he has not been convicted. Consequently, we affirm the order of the district court with respect to this claim.³

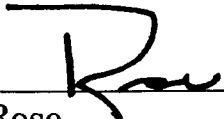
Daniels also contended that the State breached the plea agreement by arguing that his sentences should be imposed consecutively, when the plea agreement specifically provided that the State would not oppose concurrent time. This claim is not appropriately raised in a motion to modify a sentence because it does not involve a mistaken assumption concerning Daniels' criminal record. Moreover, as a separate and

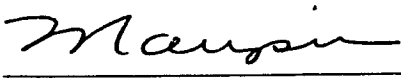
³To the extent that Daniels also argued that his sentence should be modified because he was denied the right to read his PSI prior to sentencing, and because he was not interviewed by the Division of Parole and Probation, we note that these claims are outside the scope of a motion to modify a sentence because they do not involve mistaken assumptions concerning Daniels' criminal record.

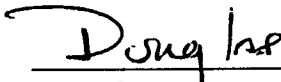
independent ground to deny relief, this claim is without merit. In the plea agreement, the State retained the right to argue at sentencing, but stipulated that it would not oppose the instant sentences being run concurrently with Daniels' sentence in district court case no. C160684. At Daniels' sentencing hearing, the State argued that the sentences for the instant offenses should be run consecutively to one another, but concurrently to Daniels' sentence in case no. C160684. The State's argument was consistent with the terms of the plea agreement. The district court was not bound by the negotiations, however, and ordered the sentences for Daniels' two cases to run consecutively. We therefore conclude that the district court did not err in denying this claim.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Daniels is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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