IN THE SUPREME COURT OF THE STATE OF NEVADA

BYRON ELROY CRUTCHER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 49165
BYRON ELROY CRUTCHER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 49347

FILED

JAN 22 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 49165 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 49347 is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Elizabeth Halverson, Judge; Stephen L. Huffaker, Judge. We elect to consolidate these appeals for disposition.[1]

On January 23, 1997, the district court convicted appellant, pursuant to a guilty plea, of robbery, victim 65 years of age or older. Appellant was adjudicated a habitual criminal and sentenced to serve a term of life in the Nevada State Prison with the possibility of parole after

[1]See NRAP 3(b).

10 years. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.[2]

On January 22, 1998, appellant filed in the district court a proper person post-conviction petition for a writ of habeas corpus in which he raised an appeal deprivation claim. The district court denied appellant's petition. On appeal, this court concluded that appellant was deprived of his right to a direct appeal, reversed the district court's order and remanded the matter,[3] directing the district court to appoint counsel to assist appellant in filing a petition for a writ of habeas corpus raising any issues that appellant could have raised on direct appeal pursuant to Lozada v. State.[4]

Appellant's Lozada counsel filed a supplemental brief in support of appellant's petition for a writ of habeas corpus. After conducting an evidentiary hearing, the district court denied the petition. This court affirmed the denial of the petition on appeal.[5]

On October 20, 2005, appellant filed in the district court a post-conviction petition for a writ of habeas corpus in which he challenged the effectiveness of his Lozada counsel. The district court denied

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[2]Crutcher v. State, Docket No. 30361 (Order Dismissing Appeal, May 27, 1997).

[3]Crutcher v. State, Docket No. 32140 (Order of Reversal and Remand, September 26, 2000).

[4]110 Nev. 349, 871 P.2d 944 (1994).

[5]Crutcher v. State, Docket No. 42355 (Order of Affirmance, September 20, 2005).

appellant's petition on February 7, 2006. This court affirmed the denial of the petition on appeal.[6]

On November 1, 2006, appellant filed a post-conviction petition for a writ of habeas corpus, which the State moved to dismiss. Appellant filed a reply to the State's motion, and the State filed a response to the reply. The district court denied appellant's petition on March 7, 2007, after conducting an evidentiary hearing. The appeal in Docket No. 49165 followed.

On March 13, 2007, appellant filed a motion to correct an illegal sentence. The State opposed the motion. On May 4, 2007, the district court denied the motion. The appeal in Docket No. 49347 followed.

Docket No. 49165

In his petition, appellant raised several claims challenging the Board of Parole Commissioners' ("Board") application of parole guidelines that were enacted after he was convicted. Appellant contended that the Board impermissibly applied amended parole guidelines to raise his crime severity level and increase the amount of time he must serve before being paroled, thereby violating the terms of his plea agreement and the separation of powers, as well as the Ex Post Facto, Due Process, and Equal Protection Clauses of the United States Constitution.

Based upon our review of the record on appeal, we conclude that the district court did not err by denying appellant's petition.[7] The

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[6]Crutcher v. State, Docket No. 46767 (Order of Affirmance, September 13, 2006).

[7]See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that this court will affirm an order that reaches the correct result, even if based upon an incorrect ground).

Board's application of revised parole guidelines did not violate the terms of appellant's plea agreement, the Ex Post Facto Clause,[8] or any other constitutional provision. Parole is an act of grace; a prisoner has no constitutional right to parole.[9] NRS 213.10705 explicitly states that "it is not intended that the establishment of standards relating [to parole] create any such right or interest in liberty or property or establish any basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees." Thus, a due process claim may not be successfully made in the instant case because the Board's power to grant parole does not create a constitutionally cognizable liberty interest.[10] Additionally, the subject of parole is within the legislative authority.[11] NRS 213.10885(1) provides that the Board shall adopt specific standards or guidelines to assist the Board in determining whether to grant or deny parole. NRS 213.10885(5) further requires the Board to conduct a comprehensive review of the standards every second year and adopt revised standards if any are

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[8]See California Dept. of Corrections v. Morales, 514 U.S. 499, 504-05 (1995) (stating that the Ex Post Facto Clause "is aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.'") (quoting Collins v. Youngblood, 497 U.S. 37, 43 (1990)); see generally Vermouth v. Corrothers, 827 F.2d 599, 604 (9th Cir. 1987) (holding that federal parole guidelines were not laws for ex post facto purposes).

[9]See NRS 213.10705; Niergarth v. Warden, 105 Nev. 26, 768 P.2d 882 (1989).

[10]See NRS 213.1099; Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

[11]See Pinana v. State, 76 Nev. 274, 283, 352 P.2d 824, 829 (1960).

determined to be ineffective. The decision to grant or deny parole lies within the discretion of the Board, and the Board may deviate from the parole likelihood success standards.[12] Our review of the record on appeal indicates that the Board applied the correct guidelines in determining appellant's eligibility for parole.[13] The application of the parole guidelines to determine appellant's crime severity level did not equate to a re-sentencing of appellant and, therefore, did not violate the separation of powers. Therefore, we affirm the denial of appellant's petition.

Docket No. 49347

In his motion, appellant contended that the district court lacked jurisdiction to adjudicate him a habitual criminal because the State failed to file an amended information seeking habitual criminal adjudication. Appellant also asserted that his sentence was illegal and should be modified because the district court relied on invalid prior convictions when adjudicating him a habitual criminal, which worked to his extreme detriment.

A motion to correct an illegal sentence 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.[14] "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to

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[12]See NRS 213.1099(2) (providing that the Board shall consider the standards and various other factors in determining whether to deny or grant parole); NAC 213.560(1) (stating that the standards do not restrict the Board's discretion to grant or deny parole).

[13]See NRS 213.10885(1), (5); NRS 213.1099(2); NAC 213.560(1).

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

challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"[15] 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."[16] A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied.[17]

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. The record reveals that the State filed an amended information in the district court on October 8, 1996, that contained a count seeking habitual criminal adjudication pursuant to NRS 207.010 and alleged each of appellant's prior convictions. The State presented certified copies of 10 prior convictions for appellant, and appellant did not deny any of these convictions. Appellant failed to demonstrate that any of his prior convictions were constitutionally invalid. Thus, he failed to demonstrate that the district court was not a court of competent jurisdiction, his sentence exceeded the statutory maximum,[18] or the district court relied on mistaken assumptions about his criminal

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[15]Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

[16]Id.

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

[18]See 1985 Nev. Stat., ch. 544, § 2 at 1643-44 (NRS 207.010(2)) (providing that a person convicted of a felony who has previously been convicted of three felonies is a habitual criminal and shall be punished by life without the possibility of parole or life with the possibility of parole after 10 years).

record that worked to his extreme detriment. Therefore, we affirm the district court's denial of appellant's motion.

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.[19] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[20]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Eighth Judicial District Court Dept. 23, District Judge
Hon. Stephen L. Huffaker, Senior Judge
Byron Elroy Crutcher
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[19]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[20]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant presents claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.