IN THE SUPREME COURT OF THE STATE OF NEVADA

MILTON DAVID PLUMMER, Appellant,

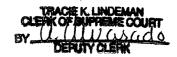
vs.

THE STATE OF NEVADA, Respondent.

No. 53963

FILED

APR 0.7 2010



ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying two motions for modification of sentence.¹ Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Having reviewed the record on appeal, we conclude that substantial evidence supports the decision of the district court to deny relief and that the district court did not err as a matter of law. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We therefore affirm the denial of the motions for the reasons stated in the attached district court order. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry

Saitta

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. <u>See Luckett v. Warden</u>, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Robert H. Perry, District Judge Milton David Plummer Attorney General/Carson City Washoe County District Attorney Washoe District Court Clerk

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

MILTON DAVID PLUMMER,

Petitioner.

Case No. CR01-2499B

Dept, No. 9 E.K.: McDANIEL, Warden, ELY STATE PRISON, STATE OF

Respondent,

ORDER

The Court has reviewed and considered the points and authorities in support of and in opposition to Petilianer's in propria persona, Motion for Modification of Sentence filed on February 25, 2008 and subsequently filed again on September 4, 2008. The Court is also in receipt of the State's Opposition to these two Motions, submitted for this Court's consideration.

Petitioner contends his sentence should be modified because the sentence was allegedly based upon a material mistake of fact in regards to Petitioner's Pre-Sentence Report and other Parole and Probation documents submitted to the Court for consideration. Petitioner asserts that the sentencing judge relied upon an incorrect Pre-Sentence Report and upon Parole and Probation reports, which contained contradictory information, which resulted in Petitioner receiving such a harsh sentence.

A motion to modify a sentence based upon a material mistake of fact may only be granted in extraordinary circumstances. Indeed, "if a sentencing court pronounces sentence within statutory limits, the court will have jurisdiction to modify, suspend, or otherwise correct a sentence if it is

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a defendant's criminal record that work to the defendant's extreme detriment" Kirkpatrick v. State, 122 Nev. 846, 137 P.3d 1193 (2006).

After reviewing the record, the Court finds no material mistake of fact occurred at the sentencing proceeding. The Court further finds the sentence imposed was within the statutory guidelines in effect when the crime was committed. Additionally, there was no objection made by Petitioner in regards to the incorrect information provided within the report during sentencing. The

record indicates that sentencing Judge Hardesty relied upon the severity of the crimes for which

Petitioner was charged at the time. Judge Hardesty stated, "... but you are a danger to society. I am

utterly astounded at the extent of the crimes committed in this case, . . (emphasis added)" (Sentencing

based upon materially untrue assumptions or mistakes which work to the extreme detriment of

defendant." State Dep't of Prisons v. Kinisey, 109 Nev. 519, 522, 853 P.2d 109, 111 (1993). Also,

"a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about

Thus, it appears that even if the Pre-Sentence Report contained incorrect facts, it appears the sentencing judge did not materially rely upon the report in his imposition of Petitioner's sentence.

Accordingly, the Court finds that the modification of Petitioner's sentence is not warranted.

Petitioner additionally filed a subsequent *Motion* in which he requests a Stay in regards to the restitution charges pending until he is released from prison. Petitioner asserts the payment of these charges places an undue burden upon Petitioner while he is incarcerated. However, the Court feels a Stay is not warranted at this time.

The Court has reviewed the entire file, the pleadings, points and authorities, and exhibits filed therein. Good cause appearing, IT IS HEREBY ORDERED that Petitioner's Motion for Modification of Sentence is DENIED.

DATED: This 22 day of May, 2009.

Transcript, August 23, 2003, page 11).

DISTRICT JUDGE