

IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY ALLEN BACON,

No. 36387

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 30 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion to modify a sentence. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this case.

On September 21, 1998, the district court convicted appellant Troy Allen Bacon, pursuant to a guilty plea, of three counts of assault with a deadly weapon on a public officer. The district court sentenced Bacon to serve three consecutive terms of 28 to 72 months in prison and ordered him to pay \$2,216.00 in restitution.

On February 24, 2000, Bacon filed a motion to modify the sentence. The State opposed the motion. On June 28, 2000, the district court denied the motion. This appeal followed.

Bacon argues that the district court erred in denying his motion to modify the sentence. In particular, Bacon argues that the district court should have modified the sentences to run concurrently because the district court imposed consecutive sentences based on a material mistake of fact that worked to Bacon's extreme detriment. Bacon claimed that the material mistake involved the facts and circumstances of the charged offenses. Namely, that the district court mistakenly believed that Bacon intended to shoot the police officers when he actually shot into the air in an attempt to draw the officers' fire in furtherance of his attempt to commit suicide. We conclude that Bacon's arguments lack merit and that the district court did not err in denying the motion to modify the sentence.

We have held that a district court has the inherent authority to modify a sentence in limited circumstances. Specifically, the district

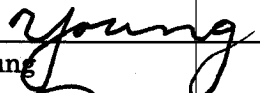
01-20033


court may modify a sentence "that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant, but only if the mistaken sentence is the result of the sentencing judge's misapprehension of a defendant's criminal record."¹


It is not entirely clear that Bacon's motion involved a misapprehension of his criminal record. But even assuming that it did, the record clearly demonstrates that the sentence was not the result of the sentencing judge's misapprehension of Bacon's criminal record. The arguments raised in the motion were raised at the sentencing hearing. The district court was aware that Bacon disputed the officers' account of the incident. The district court was also aware that Bacon insisted that he was only attempting to commit suicide, not to injure anyone else. In ruling on the motion to modify, the district court judge explained that the sentence was based on his determination that the testimony and physical evidence that Bacon fired directly at the officers upon his initial contact with them and that he endangered the lives of many people was overwhelming and outweighed any mitigating evidence offered by the defense. The record supports that conclusion. Because the sentencing court was aware of the information contained in the motion to modify, we conclude that Bacon failed to demonstrate that his sentence was based on a misapprehension of material fact. Accordingly, the district court did not err in denying the motion to modify.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

¹Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) (quoting State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984) (emphasis added)).

cc: Hon. Michael P. Gibbons, District Judge
Attorney General/Carson City
Douglas County District Attorney/Minden
Roeser & Roeser
Douglas County Clerk