

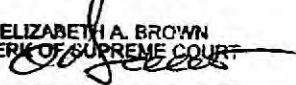
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DALE FLOYD GARRETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82005-COA

FILED

AUG 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dale Floyd Garrett appeals from an order of the district court denying a motion for modification of sentence filed on August 25, 2020. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

In his motion and at the hearing on his motion, Garrett claimed there were errors regarding his criminal history in his presentence investigation report (PSI). He claimed that his prior convictions were old and an alleged conviction out of Arizona for failing to register as a sex offender was not actually a conviction. “[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.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

At the hearing, the district court found that, even with the corrections to the PSI, Garrett would have received the same sentence. Garrett’s sentence was a reflection of the facts of the crimes¹ and the nature of Garrett’s conduct surrounding the crimes, in addition to his prior

¹Garrett was convicted of two counts of unlawful dissemination of an intimate image.


convictions. Specifically, Garrett had been allegedly stalking and harassing the victim prior to sending the photos to her current boyfriend and posting a picture on her social media account. For these reasons, we conclude the district court did not err by finding Garrett failed to demonstrate the sentencing court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. Therefore, we conclude the district court did not err by denying this claim.

Garrett also claimed the PSI improperly contained information about the charges that were dismissed in exchange for his guilty plea. Garrett's guilty plea agreement stated, "I understand that information regarding charges not filed, dismissed charges or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing." Further, the district court may consider "any reliable and relevant evidence at the time of sentencing." NRS 176.015(6). Because Garrett agreed the other charges could be considered by the district court, and he failed to demonstrate the facts regarding the dismissed charges were not reliable or relevant, the inclusion of these facts in the PSI was not improper. Thus, he failed to demonstrate the sentencing court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. Accordingly, we conclude the district court did not err by denying this claim.

Finally, Garrett claimed that information included in the marital status section was incorrect and he did not commit the crime of unlawful dissemination of an intimate image because the photos were not private. These claims fell outside the narrow scope of claims permissible in a motion to modify. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, without considering the merits of these claims, we conclude the district court did not err by denying them.

Having concluded Garrett is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Dale Floyd Garrett
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk