

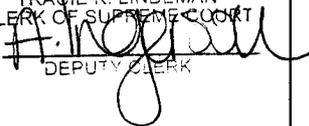
IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DEVON SUTTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59378

FILED

JUN 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence and vacate judgment.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant was convicted of first-degree murder with the use of a deadly weapon and sentenced to life in prison with the possibility of parole after 20 years plus an equal and consecutive term for the use of the deadly weapon. In his motion, filed on September 8, 2011, appellant claimed that his sentence was illegal because it violated the legislative intent that his sentence be structured as life with the possibility of parole after 40 years. Appellant failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); Nevada Dep't Prisons v. Bowen, 103 Nev. 477, 481, 745 P.2d 697, 699 (1987). Moreover,

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

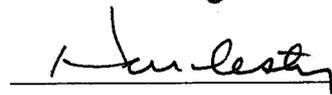
appellant failed to demonstrate that his sentence was based on a mistaken assumption of material fact regarding his criminal record that worked to his extreme detriment. See Edwards, 112 Nev. at 708, 918 P.2d at 324.

Appellant also claimed that his sentence violated the Double Jeopardy Clause and that his guilty plea was invalid. These were challenges to the validity of the judgment of conviction and must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724(2)(b); NRS 34.738(1).² We therefore conclude that the district court did not err in denying appellant's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Kathleen E. Delaney, District Judge
Kevin Devon Sutton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We express no opinion as to whether petitioner could meet the procedural requirements of NRS chapter 34.