

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENJAMIN MCCURDY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77125-COA

**FILED**

**MAY 21 2019**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Benjamin McCurdy appeals from an order of the district court denying a motion to modify sentence filed on September 5, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his motion, McCurdy claimed there were errors in his presentence investigation report (PSI), including extra aliases, social security numbers, and birthdates. He also claimed the PSI was incorrect as to where his tattoos were located. McCurdy's claims fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits, we conclude the district court did not err by these claims.

McCurdy also claimed the PSI was incorrect in its offense synopsis where it stated McCurdy semi-confessed to the crime. McCurdy failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See id.*


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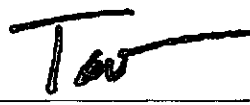
<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


Therefore, we conclude the district court did not err by denying McCurdy's claim.

For the first time on appeal, McCurdy argues his psychosexual evaluation was riddled with errors, he was not allowed to review his PSI prior to sentencing, and there is missing content in his PSI. Because these claims were not raised below, we decline to consider them on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Valerie Adair, District Judge  
Benjamin McCurdy  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>To the extent McCurdy claims the district court erred by denying his motion before allowing him to reply to the State's opposition to his motion, McCurdy failed to demonstrate the district court erred, because McCurdy did not have the right to respond to the State's opposition.