

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK BENSON, A/K/A
FREDDIE BENSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72220

FILED

OCT 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederick Benson appeals from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

On June 6, 2016, Benson filed a motion to modify sentence in the district court. The district court ruled that it would treat the motion as a postconviction petition for a writ of habeas corpus and gave Benson 45 days to file a petition that complied with the procedural requirements of NRS Chapter 34. On August 15, 2016, Benson filed the instant petition. The district court determined that the petition was procedurally barred and ordered it denied.

On appeal, Benson claims the district court erred by treating his motion to modify sentence as a postconviction petition for a writ of habeas corpus and subjecting it to the procedural rules that apply to such petitions. Although we conclude the district court erred in ruling that Benson's motion must conform to the habeas statutes and meet their procedural requirements, we further conclude the district court reached the

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


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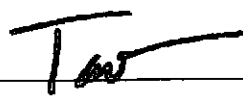
correct result and Benson is not entitled to relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

The Nevada Supreme Court has expressly recognized that motions to modify sentence are "challenges to judgments of conviction that are 'incident to the proceedings in the trial court,' and thus are excepted by NRS 34.724(2)(a) from the provisions of the habeas statutes." *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 323-24 (1996). "[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." *Id.* at 708, 918 P.2d at 324. The district court may summarily deny a motion to modify a sentence if the motion raises issues that fall outside of this very narrow scope. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

In his motion to modify sentence, Benson alleged his sentence was based on errors in his presentence investigation report (PSI) and defense counsel coerced him into pleading guilty to first-degree murder. Benson did not identify any material errors in his PSI and his ineffective-assistance-of-counsel allegation fell outside of the narrow scope of claims that may be raised in a motion to modify sentence. Accordingly, we conclude the district court reached the correct result, and we

ORDER the judgment of the district court AFFIRMED.


Silver, C.J.


Tao, J.


Gibbons, J.

cc: Hon. Carolyn Ellsworth, District Judge
Frederick Benson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk