

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSHON NICHALOS GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78912-COA

FILED

JAN 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION*

Dushon Nichalos Green appeals from an order of the district court denying a motion to correct an illegal sentence filed on March 26, 2019. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Green contends the district court erred by denying his motion to correct an illegal sentence. Green claimed his DNA sample was illegally obtained and, accordingly, everything that followed was illegal, including his conviction and sentence. A motion to correct an illegal sentence is limited to claims that a sentence is facially illegal. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). That is, the sentence was at variance with the controlling statutes, the court lacked jurisdiction, or the sentence was in excess of the statutory maximum. *Id.* Green's claim went to the validity of his conviction and sentence, not the legality of his sentence, and as such was outside the scope of a motion to correct an illegal sentence. *See id.* To the extent Green sought a sentence modification, his claims were

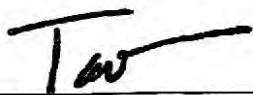
also outside the scope of such a motion. *See id.* We therefore conclude the district court did not err by denying Green's motion.¹

Green also contends his underlying criminal cases should not have been consolidated. This is new argument not raised below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Finally, we note the judgment of conviction appears to contain a clerical error. Although the jury found Green was guilty of count three, the sentencing court adjudged Green guilty of it, and the judgment of conviction reflects a sentence for it, the judgment of conviction does not state that Green was convicted of count three. We therefore remand this matter to the district court for the limited purpose of correcting this clerical error. *See* NRS 176.565. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We note that Green raised the same claim in his appeal from his judgment of conviction. *See Green v. State*, Docket No. 50756 (July 31, 2009). Accordingly, Green's claim is also barred by the doctrine of the law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

cc: Hon. Carolyn Ellsworth, District Judge
Dushon Nichalos Green
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk