

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD GUY KINSMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77782-COA

FILED

MAR 12 2020

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

ORDER OF AFFIRMANCE

Donald Guy Kinsman appeals from an order of the district court denying a motion for modification of sentence filed on October 22, 2018. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Kinsman argues the district court erred by denying his claim that his sentence should be modified because the State presented misleading information regarding the victims' injuries and the cause of the car crash. Kinsman'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 of these claims, we conclude the district court did not err by denying the motion.¹

Kinsman also argues the district court erred by failing to construe his motion to be a postconviction petition for a writ of habeas corpus. However, the district court had no obligation to construe his motion

¹To the extent Kinsman also argues that the district court erred by denying his claim that his sentence was illegal, his underlying claim was also outside the scope of a motion to correct an illegal sentence. *See id.*

as a postconviction petition. Therefore, we conclude the district court did not err by not so construing the motion.

Finally, Kinsman argues he received ineffective assistance of counsel because counsel failed to review available evidence and retain an accident reconstructionist. This claim was not raised below, and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Flangas Law Firm, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk