

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON ARTHUR ALTHEIDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80733-COA

JASON ARTHUR ALTHEIDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80734-COA ✓

FILED

DEC 08 2020

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

ORDER OF AFFIRMANCE

Jason Arthur Altheide appeals from identical district court orders filed in district court case numbers CR8242 (Docket No. 80733-COA) and CR8254 (Docket No. 80734-COA) that denies a motion to correct an illegal sentence filed on October 12, 2018, and a motion to modify a sentence filed March 7, 2019. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

First, Altheide claims the district court erred by denying his motion to correct an illegal sentence because the judgments of conviction stated he was sentenced pursuant to NRS 207.010(1)(a) but imposed sentences that were greater than the maximum sentences permissible under NRS 207.010(1)(a).

A judgment of conviction may be amended at any time to correct an illegal sentence or a clerical error. NRS 176.555; NRS 176.565. A motion

to correct an illegal sentence may challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). And “a clerical error is a mistake or omission by a clerk, counsel, judge, or printer which is not the result of the exercise of the judicial function.” *In re Humboldt River System*, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961).

The district court found that the sentencing transcript clearly demonstrated the sentencing court’s intent to sentence Altheide pursuant to NRS 207.010(1)(b) and that the citations to NRS 207.010(1)(a) in the judgments of conviction were clerical errors. The record supports these findings, and we conclude the district court did not err by denying Altheide’s motion to correct an illegal sentence.

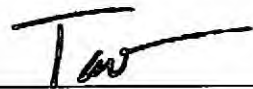
Second, Altheide claims the district court erred by denying his motion to modify a sentence because the prior felony convictions that were used to adjudicate him a habitual criminal were based on nonviolent offenses, and therefore, the district court misperceived his criminal record at the time of sentencing.


“[T]he district court has inherent authority to correct, vacate or modify a sentence that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant, but only if the mistaken sentence is the result of the sentencing judge’s misapprehension of a defendant’s criminal record.” *Edwards*, 112 Nev. at 707, 918 P.2d at 324 (emphasis and internal quotation marks omitted).

The district court found that Altheide raised the same or a similar claim in a prior motion,¹ the sentencing court was aware of the nature of Altheide's criminal history, and the district court did not make a material mistake of fact during sentencing. The record supports these findings, and we conclude the district court did not err by denying Altheide's motion to modify a sentence.

Having concluded Altheide is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

¹See *Altheide v. State*, Docket Nos. 76709-COA, 76710-COA (Order of Affirmance, July 17, 2019) (“As acknowledged by Altheide, his California theft convictions were crimes ‘which under the laws of the situs of the crime’ amounted to a felony, and therefore were properly considered for enhancement purposes pursuant to NRS 207.010(1)(b).”).