

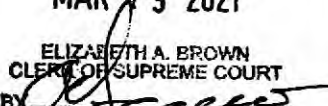
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH WAYNE MCCLELLAND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81569-COA

**FILED**

MAR 19 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kenneth Wayne McClelland appeals from an order of the district court denying a motion to modify or correct an illegal sentence. Tenth Judicial District Court, Churchill County; Jim C. Shirley, Judge.

McClelland argues the district court erred by denying his June 4, 2020, motion to modify or correct an illegal sentence. In his motion, McClelland claimed he was unable to review the presentence investigation report (PSI) prior to the sentencing hearing. As a result, McClelland claimed the PSI improperly stated he was originally charged with attempted murder, the PSI did not accurately state where he resided, and the PSI did not accurately state the victim's age. McClelland also argued the author of the PSI assessed his culpability based upon emotion and should have noted in the PSI that McClelland did not know the victim. In addition, McClelland contended his codefendant bore more responsibility for the crimes and he should therefore have received a shorter sentence than his codefendant.

The record demonstrated that the sentencing court made no reference as to whether McClelland was originally charged with attempted murder. Rather, the sentencing court stated it had reviewed the facts of the

offense and found the level of violence used against the victim difficult to comprehend. Based on the record, McClelland failed to demonstrate the sentencing court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). McClelland's remaining claims fell outside of the scope of claims permissible in a motion to modify sentence. *See id.* Moreover, all of McClelland's claims fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. *See id.* Therefore, we conclude the district court did not err by denying McClelland's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

cc: Hon. Jim C. Shirley, District Judge  
Kenneth Wayne McClelland  
Attorney General/Carson City  
Churchill County District Attorney/Fallon  
Churchill County Clerk

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<sup>1</sup>We have reviewed the "motion to correct illegal sentence structure" McClelland has filed in this matter, and we conclude no relief is warranted. To the extent McClelland attempts to present claims or facts which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).