

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT NEAL DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81803-COA

FILED

JUL 14 2021

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

ORDER OF AFFIRMANCE

Robert Neal Davis appeals from an order of the district court denying a November 21, 2019, motion for modification of sentence and later-filed supplement. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Davis argues that the district court erred by construing his motion for modification of sentence and supplement as a postconviction petition for a writ of habeas corpus. The Nevada Supreme Court has recognized that motions to modify or correct an illegal sentence are permissible postconviction motions and thus may be utilized by an incarcerated person to request a modification or correction of a sentence. *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 323-24 (1996).

The district court found that Davis challenged his judgment of conviction and noted that a postconviction petition for a writ of habeas corpus is the exclusive remedy for an incarcerated person to challenge a judgment of conviction. The district court therefore construed the motion as a postconviction petition for a writ of habeas corpus. However, the record demonstrates Davis filed a motion for modification of his sentence and opposed having his motion construed as a postconviction petition for a writ

of habeas corpus. Because Davis may properly pursue relief through a motion to modify or correct an illegal sentence, we conclude the district court erred by construing a permissible motion as a postconviction petition for a writ of habeas corpus. Nevertheless, we affirm because the district court properly denied relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his motion and later-filed supplement, Davis requested modification of his sentence and asserted that his sentence was illegal based upon ineffective assistance of counsel, delays caused by the extradition process, and the failure of the trial-level court to conduct a proper plea canvass. Davis also asserted he was entitled to relief pursuant to the Americans with Disabilities Act due to issues stemming from his mental health problems and because the sentencing court was not provided with records from a hospital or social services. In addition, Davis contended the sentencing court erred by failing to state on the record that it had considered the factors required by NRS 193.165(1) before imposing the sentence for the deadly weapon enhancement, and he asserted a plea of guilty but mentally ill is unconstitutional.

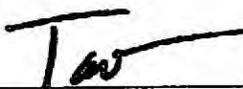
“[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Edwards*, 112 Nev. at 708, 918 P.2d at 324. A motion to correct an illegal sentence may only challenge the facial legality 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. *Id.* “A motion to correct an illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.”

Id. (internal quotation marks omitted). In addition, a motion to modify or correct an illegal sentence may be summarily denied if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

Davis failed to demonstrate the sentencing court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See id.* Davis also failed to demonstrate that his sentence was facially illegal or the sentencing court lacked jurisdiction to impose a sentence. *See id.* Therefore, we conclude that Davis was not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk