

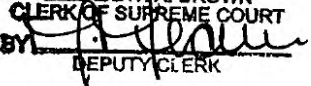
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK R. ZANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84854-COA

**FILED**

MAR 30 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Mark R. Zana appeals from an order of the district court denying a “motion for modification of sentence” filed on April 21, 2022. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In his motion, Zana claimed his sentence was illegal and should be modified because the district court lacked jurisdiction to sentence him. Zana claimed, based on a case that was decided several years after his conviction was final, that the district court lacked jurisdiction to impose consecutive sentences for two of his convictions for possession of visual presentation depicting sexual conduct of a person under the age of 16 years.

Zana failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. Zana also failed to demonstrate that his sentence was facially illegal, *see* NRS 200.730(1); NRS 176.035(1), or that the district court lacked jurisdiction, *see* Nev. Const. art. 6, § 6; NRS 171.010; *United States v.*

*Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). Therefore, we conclude the district court did not err by denying Zana’s claim. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Zana also claimed that he was entitled to relief because the State exceeded its jurisdiction and authority when it charged him with 12 separate counts of possession of visual presentation depicting sexual conduct of a person under the age of 16 years. He also claimed he was entitled to a new trial because the outcome of the trial may have been different had he only been charged with one count. Zana’s claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. See *id.* Therefore, without considering the merits of the claims, we conclude the district court did not err by denying these claims.

On appeal, Zana argues the district court erred by failing to sever the lewdness counts from the possession counts. This claim was not raised below, and we decline to consider it for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Zana also argues the State failed to serve him with a copy of its reply to his motion and the district court’s order failed to contain factual findings and conclusions of law. Given that Zana’s underlying claims either

lacked merit or were outside the scope of a motion to modify or correct an illegal sentence, Zana fails to demonstrate the alleged errors affected his substantial rights. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Crystal Eller, District Judge  
Mark R. Zana  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk