

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86112

**FILED**

JAN 16 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a motion to modify or correct an illegal sentence.<sup>1</sup> Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Appellant James Howard Hayes, Jr. argues that the sentencing court's decision to adjudicate him under the small habitual criminal statute was based on mistaken assumptions about his criminal record. Specifically, Hayes contends that, of the four judgments of conviction presented by the State at sentencing, two of them—the 2007 Texas convictions—comprised only a single conviction for purposes of the habitual criminal statute and one of the other convictions—a 2017 burglary conviction—could not be used to adjudicate him a habitual criminal because it was entered after the commission of the instant offense.

Hayes does not dispute that the State proved at least two prior felony convictions, which was the number of convictions required under NRS 207.010(1)(a) to qualify him for habitual criminal adjudication. See 2009 Nev. Stat., ch. 156, § 1, at 567. Because Hayes had the requisite number of felony convictions to qualify as a habitual criminal, the district

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

court had the discretion to adjudicate him as such. *See LaChance v. State*, 130 Nev. 263, 278-79, 321 P.3d 919, 929-30 (2014). Hayes thus fails to demonstrate that any mistaken assumptions about his criminal history worked to his extreme detriment. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (limiting the scope of a motion to modify a sentence “to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment”).

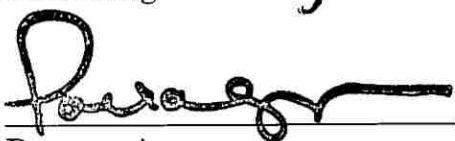
Hayes also argues that the sentencing court violated his procedural due process rights in adjudicating him a habitual criminal because the court based its decision solely on the State proving the prior felony convictions and made no individualized finding that adjudication was just and proper. He contends that his sentence is therefore illegal and must be corrected. This claim is outside the scope of claims permitted in a motion to correct an illegal sentence, because it does not challenge the facial legality of the sentence. *See id.*

Having considered Hayes’ arguments, we conclude the district court did not err by denying his motion to modify or correct an illegal sentence, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Stiglich

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Monica Trujillo, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk