

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISAAC ASUSTA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

ISAAC ASUSTA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85712-COA

**FILED**

JAN 30 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY   
DEPUTY CLERK

No. 85799-COA

*ORDER AFFIRMING IN PART, VACATING JUDGMENT IN PART AND  
REMANDING*

Isaac Asusta appeals from an order denying a motion to modify and/or correct an illegal sentence filed on June 3, 2022 (Docket No. 85712). Asusta also appeals from a corrected judgment of conviction, entered pursuant to guilty plea, of first-degree murder with the use of a deadly weapon and second-degree murder with the use of a deadly weapon filed on November 22, 2022 (Docket No. 85799). These cases were consolidated on appeal. *See* NRAP 3(b). Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

*Docket No. 85712*

In his motion, Asusta claimed his sentence should be modified and/or corrected because (1) the judgment of conviction states restitution is “payable through the Division of Parole and Probation” when restitution is a matter for a civil action that must be enforced by a writ of execution; (2)

the judgment of conviction is not final because it does not set an amount of restitution for each victim and does not identify the victims as required by NRS 176.033(3) and NRS 176.105(1)(c); and (3) the Nevada Department of Corrections is illegally enforcing the restitution order by seizing funds from his prison account, and there is no indication of who is receiving the money.

“[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 v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). 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.* Without considering the merits of Asusta’s claims, we conclude they fall outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. Therefore, we conclude the district court did not err by denying Asusta’s motion.

On appeal, Asusta argues the district court failed to address his claim that funds have been illegally removed from his prison account and the Division of Parole and Probation may have been receiving a windfall. Because we hold his claims are outside the scope of claims permissible in a motion to modify and/or correct an illegal sentence, we conclude the district court did not err by failing to address this claim on the merits. *See id.* at 708 n.2, 918 P.2d at 325 n.2 (stating the district court may summarily deny a motion to modify or correct an illegal sentence if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions).

Asusta also argues the district court erred by characterizing the omission of the victim's identity in the original judgment of conviction as a clerical error. Even assuming the district court erred, we conclude Asusta is not entitled to relief on this claim because the district court properly denied Asusta's motion. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). *Docket No. 85799*

Asusta argues that the district court lacked jurisdiction to enter the corrected judgment of conviction because he filed the notice of appeal challenging the district court's order denying his motion to modify and/or correct an illegal sentence on November 18, 2022, four days before the district court entered the corrected judgment of conviction on November 22, 2022.

Generally, a notice of appeal divests the district court of jurisdiction until this court issues its remittitur, thus returning jurisdiction to the district court. *Buffington v. State*, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). However, while an appeal is pending and prior to issuance of the remittitur, the district court retains jurisdiction to "enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006).

The corrected judgment is not collateral to, or independent from, the district court's order denying Asusta's motion to modify and/or correct an illegal sentence. Rather, the corrected judgment was a direct result of the district court's order denying the motion to modify and/or correct an illegal sentence. As stated above, Asusta argued in his motion that the original judgment of conviction failed to identify the victims who

were owed restitution. The district court (1) determined that this omission was a clerical error that did not render Asusta's sentence illegal and (2) ordered the State to prepare an amended judgment of conviction identifying A. Coca as the recipient of the restitution award to correct the clerical error. Thus, the corrected judgment directly bore upon the merits of Asusta's appeal, and we conclude the district court lacked jurisdiction to enter the corrected judgment until the supreme court has issued remittitur in Docket No. 85712.

For the foregoing reasons, we affirm the district court's order denying Asusta's June 3, 2022, motion to modify and/or correct an illegal sentence. However, we vacate the corrected judgment of conviction filed on November 22, 2022, and remand this matter to the district court. Only after the supreme court issues remittitur in the instant appeals may the district court determine whether to issue a corrected judgment of conviction.<sup>1</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

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

<sup>1</sup>In light of our disposition, we do not reach Asusta's remaining claims on appeal.

cc: Hon. Steve L. Dobrescu, District Judge  
David Schieck Law Office  
Attorney General/Carson City  
White Pine County District Attorney  
White Pine County Clerk