

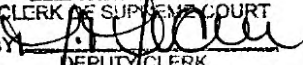
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEVAN MYCHALS GIORDANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86339-COA

FILED

MAR 27 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jevan Mychals Giordani appeals from an order of the district court denying a motion for reconsideration/modification of sentence filed on January 31, 2023. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

In his motion, Giordani alleged that the sentencing court relied on a prior conviction that it incorrectly understood to be a felony in fashioning his sentence. “[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).

Giordani’s only prior conviction at the time of sentencing was for grand theft from a person that had been redesignated as a misdemeanor pursuant to California Proposition 47. Giordani claimed the sentencing court improperly relied on this conviction being a felony as evidenced by the court stating, “As a felon he shouldn’t have a gun, we all agree right?” In its order denying Giordani’s motion, the district court acknowledged that the sentencing court was mistaken as to Giordani’s felon status but

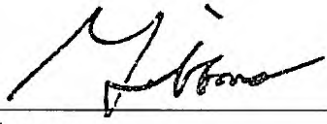
concluded that this error did not work to his extreme detriment. In reaching this conclusion, the district court found that the sentencing court (1) was concerned that Giordani used a gun to commit the instant offense, (2) did not state that it was basing its sentencing decision on the fact that Giordani was a felon, and (3) was more concerned with Giordani's prior criminal conduct in that he committed the California offense as opposed to whether it was a felony. These findings are supported by the record.

The sentencing court's statement indicates that it was focused on the fact that Giordani committed the instant offense with a firearm despite being legally prohibited from possessing one, not necessarily on the fact that his prior conviction was a felony. The redesignation of the offense to a misdemeanor did not restore Giordani's ability to possess a firearm. *See People v. Foster*, 447 P.3d 228, 313 (Cal. 2019) ("Proposition 47 mandates that, with the exception of firearms restrictions, a redesignated conviction shall be considered a misdemeanor for all purposes." (internal quotation marks omitted)).

In addition, during sentencing, Giordani argued that his prior conviction was a "wobbler" for which he received probation with an underlying sentence of 365 days in jail. The sentencing court explained that the "bigger concern" was that Giordani committed the offense, not whether it was treated as a felony. This statement indicates that the sentencing court was concerned about Giordani's conduct and not whether the prior conviction was a felony or misdemeanor. In light of these circumstances, we conclude that Giordani failed to demonstrate the sentencing court's decision was based on mistaken assumptions about his criminal record that

worked to his extreme detriment. Therefore, we further conclude that the district court did not err in denying Giordani's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk