

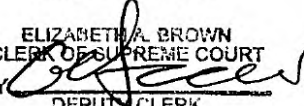
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHILLIP CHARLES MOORE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86970-COA

FILED

MAR 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Phillip Charles Moore, Jr., appeals from an order of the district court denying a motion to modify and/or correct an illegal sentence filed on April 13, 2023. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In his motion, Moore claimed his sentence should be modified because the district court relied on an error in his presentence investigation report (PSI) that worked to his extreme detriment.¹ “[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).

Moore claimed that the PSI stated that he had been arrested for “felon in possession of a firearm” in March 2003 but he was never arrested for that offense. While Moore provided some documentation to

¹Despite the designation of his motion, Moore’s claim did not challenge the legality of his sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (providing that 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).

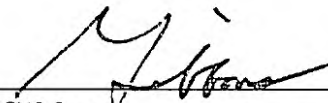
support his claim, he failed to demonstrate that this alleged error worked to his extreme detriment. The PSI reflects that, on the same arrest date and at the same place of arrest for the firearm charge, Moore was arrested for transporting/selling a controlled substance and that this is the charge he was ultimately convicted of. At sentencing, the district court stated it was relying on Moore's three prior felony convictions, the violent nature of the prior convictions,² and the violent nature of the instant crimes in sentencing Moore to 12 to 35 years in prison. Given the reasoning by the district court at sentencing, Moore failed to demonstrate that whether or not he had been arrested for possessing a firearm in connection with the controlled substance offense affected the sentencing court's sentencing decision or worked to his extreme detriment.

Moore also argues that the district court erred by denying his motion at a hearing at which he was not present and that his motion for transport was file stamped after the hearing date. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely stated its findings on the record. Moore fails to demonstrate that he was prejudiced by his absence at the hearing. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Therefore, Moore fails to demonstrate he was entitled to relief on this issue.

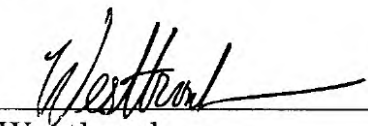
²Moore's prior criminal history also included convictions for burglary, a 2014 attempted possession of a firearm by a felon, and two counts of misdemeanor domestic battery.

Finally, Moore argues the district court should not have considered the State's response to his motion because it was untimely. The State argued it was filing the response late because Moore never served them with the motion. The certificate of service supports the State's argument as the certificate states that Moore only served the district court. Therefore, Moore fails to demonstrate the district court erred by considering the State's response. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Phillip Charles Moore, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk