

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCIS GENE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89410-COA

FILED

JUL 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Francis Gene Johnson appeals from a district court order denying a motion to modify or correct an illegal sentence filed on July 30, 2024. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In his pleadings below, Johnson claimed the sentences imposed for his conviction for sexual assault with the use of a deadly weapon were illegal because they were ambiguous. Johnson alleged the sentences could be interpreted as imposing several different minimum sentences before parole eligibility. He also appeared to contend that his ambiguous sentences amount to a materially untrue assumption or mistake of fact that worked to his extreme detriment.

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. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence presupposes a valid

conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.” *Id.* (internal quotation marks omitted). “[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.” *Id.*

The district court sentenced Johnson to “Life in Nevada State Prison with an equal to and consecutive Life term in Nevada State Prison for the Use of Deadly Weapon in commission of a crime.” At the time Johnson committed the crime, the only life sentence the district court could impose for Johnson’s offense provided for “imprisonment in the state prison for life, with possibility of parole, beginning when a minimum of 5 years has been served.” See 1991 Nev. Stat., ch. 250, § 1, at 612-13 (formerly NRS 200.366(2)(b)(1)); see also 1991 Nev. Stat., ch. 403, § 6, at 1059 (formerly NRS 193.165(1) (providing for an equal and consecutive term of imprisonment for the deadly weapon enhancement). Thus, the sentences imposed were not ambiguous. And Johnson failed to demonstrate his sentences were facially illegal, the district court lacked jurisdiction, or the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. Therefore, we conclude the district court did not err by denying this claim.

Johnson also argued the Nevada Department of Corrections illegally and secretly resentenced him or changed his sentence structure. Without considering the merits of this claim, we conclude it falls 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 Johnson's motion.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Francis Johnson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent Johnson raises additional arguments on appeal that were not presented in his pleadings below, we decline to consider them in the first instance. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).