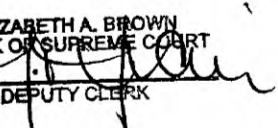


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87574-COA

FILED
MAY 08 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ferrill Joseph Volpicelli appeals from a district court order denying a motion to modify or correct an illegal sentence filed on September 11, 2023. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Volpicelli contends that the district court erred by denying his motion to modify or correct an illegal 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). 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.* And such a motion may not “be used as a vehicle for challenging the validity of a . . . sentence based on alleged errors occurring at . . . sentencing.” *Id.*

In his motion, Volpicelli claimed the district court lacked jurisdiction to impose his life sentences. In particular, Volpicelli contended the district court failed to comply with NRS 207.010 and/or NRS 207.016

when it adjudicated him as a habitual criminal because the State failed to present three qualifying prior convictions. Whether the district court properly found Volpicelli suffered previous convictions sufficient to support an adjudication of habitual criminality does not implicate the district court's jurisdiction to impose a habitual criminal sentence. Rather, "the district court's authority to impose a habitual criminal sentence [is premised] on the State's filing of an allegation of habitual criminality." *Grey v. State*, 124 Nev. 110, 124, 178 P.3d 154, 163-64 (2008). Here, the State filed a notice of intent to seek habitual criminal status on October 9, 2003, prior to Volpicelli's sentencing on April 1, 2004. Therefore, Volpicelli failed to demonstrate that the district court lacked jurisdiction to impose a habitual criminal sentence. Moreover, Volpicelli's life sentences do not exceed the statutory maximum. *See* 1997 Nev. Stat., ch. 314, § 8, at 1184-85.

To the extent Volpicelli claimed that the district court's improper reliance on a 2004 conviction to adjudicate him as a habitual criminal meant that his sentence was based on mistaken assumptions about his criminal record that worked to his extreme detriment, the Nevada Supreme Court previously held that any error in relying on that conviction did not prejudice Volpicelli because there was a sufficient number of convictions presented. *See Volpicelli v. State*, Docket No. 51622 (Order of Affirmance, December 3, 2009). This holding represents the law of the case and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). And Volpicelli did not demonstrate an exception to the application of the law of the case to this matter. *See Hsu v. Cnty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007). Therefore, Volpicelli failed to demonstrate that any mistaken

assumptions about his criminal record worked to his extreme detriment.¹
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹Volpicelli filed a “motion to take judicial notice” on March 8, 2024, in which he contends that his four prior convictions for tax perjury should be construed as a single prior conviction for the purposes of habitual criminal adjudication. We conclude no relief based upon this motion is warranted. Volpicelli did not raise these arguments in his motion below. Therefore, we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).