

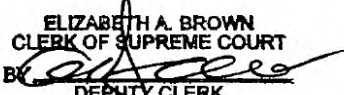
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AKSHAYA ANTHONY-DIXIT KUBIAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86809-COA

FILED

MAY 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Akshaya Anthony-Dixit Kubiak appeals from a district court order denying a motion to modify or correct an illegal sentence filed on February 17, 2023. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Kubiak was charged with murder and later pleaded guilty to voluntary manslaughter and mayhem, after entering into a guilty plea agreement expressly stating that the parties agreed “to waive any defects in the pleadings.” Kubiak argues 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.* “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).

First, Kubiak contends the district court failed to apply the statutory analysis articulated in *Jackson v. State*, 128 Nev. 598, 291 P.3d 1274 (2012), to determine whether his sentences were redundant. In his motion, Kubiak contended the district court did not have jurisdiction to impose a consecutive sentence because his charged crimes were redundant. In particular, Kubiak contended that the crimes of mayhem and voluntary manslaughter are mutually exclusive because the former requires a finding of malice but the latter requires a finding of absence of malice.

Kubiak relies on *Jackson* and Nevada’s “alternative-offense ‘redundancy’” cases to support his claim that his sentences are redundant. However, this case law concerns whether *convictions* are redundant such that cumulative punishment may not be imposed, not whether sentences are redundant. *See Jackson*, 128 Nev. at 608-13, 291 P.3d at 1280-83; *see also Braunstein v. State*, 118 Nev. 68, 79, 40 P.3d 413, 421 (2002) (“The crimes of sexual assault and lewdness are mutually exclusive and convictions for both based upon a single act cannot stand.”). Kubiak does not cite any authority that holds the analysis articulated in *Jackson* may be applied to sentences where the convictions are not challenged. Therefore, we conclude the district court did not err when it declined to apply the statutory analysis articulated in *Jackson*.¹

¹Kubiak also contends that his charges are mutually exclusive. This claim does not challenge the facial legality of Kubiak’s sentence, nor does it allege the sentence was based on mistaken assumptions about Kubiak’s criminal record that work to his extreme detriment. Thus, it is outside the scope of a motion to modify or correct an illegal sentence, and we decline to consider this claim on appeal.

Second, Kubiak contends the district court erred in determining that he had waived his underlying claim regarding redundancy in the guilty plea agreement. Even assuming the district court erred in determining that Kubiak had waived his claim, as previously discussed, Kubiak's claim lacked merit. Therefore, the district court properly denied the motion, and we conclude that Kubiak is not entitled to relief on this claim. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
McAvoy Amaya & Revero, Attorneys
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk