

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN ACOSTA-SAENZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61297

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY T. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction motion to withdraw guilty plea and/or modify sentence.¹ Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

First, appellant argues that the district court erred by denying his post-conviction motion to withdraw his guilty plea because his trial counsel failed to inform him that his plea to an aggravated felony subjected him to mandatory deportation. Appellant argued that the recent decision in *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (holding that it is ineffective for counsel to fail to inform his or her client of mandatory immigration consequences), applied retroactively to his conviction which was final in 2008. The district court denied appellant's motion to withdraw his guilty plea because it concluded that laches barred consideration of its merits. Even assuming, without deciding, that laches

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

does not preclude consideration of appellant's motion on the merits, see *Hart v. State*, 116 Nev. 558, 563-65, 1 P.3d 969, 972-73, (2000) (“[C]onsideration of the equitable doctrine of laches is necessary in determining whether a defendant has shown ‘manifest injustice’ that would permit withdrawal of a plea after sentencing”), we conclude that the district court did not err by denying appellant's motion because *Padilla* does not apply retroactively. See *Chaidez v. United States*, 568 U.S. ___, ___, 133 S. Ct. 1103, 1113 (2013) (holding that *Padilla* does not apply retroactively).²

Second, appellant claims that the district court erred by finding it lacked jurisdiction to modify his sentence. Appellant argues that the court had jurisdiction because its sentencing decision was based upon a materially untrue assumption or mistake that counsel had provided effective assistance and informed appellant of the immigration consequences. We have held that “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). Appellant does not allege that the district court relied on a mistaken assumption regarding his criminal record. We therefore conclude that the district court did not err by denying appellant's motion because his claim was beyond the scope of a motion to modify sentence.

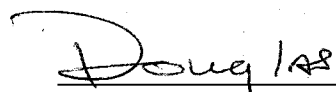
²We conclude the district court reached the correct result in denying this portion of the motion. *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

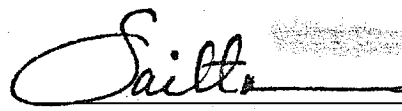
Lastly, appellant argues for a writ of *coram nobis* to correct legal errors of a constitutional or fundamental proportion. We have recently “recognized that a writ of *coram nobis* may be filed in district court by a person who is no longer in custody to challenge a judgment of conviction based on errors of fact,” see *Trujillo v. State*, 129 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 75, October 10, 2013). A claim of ineffective assistance of counsel, however, involves legal error and therefore falls outside the limited scope of the common-law writ. *Id.* Accordingly, the district court did not err by denying appellant’s petition for a writ of *coram nobis*.

Having considered appellant’s claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Jerome T. Tao, District Judge
David E. Walters
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk