

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES EDWARD HUEBLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62939

FILED

FEB 07 2014

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to modify or correct an illegal sentence. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant argues that the district court erred in denying his motion filed on February 23, 2013, in which appellant claimed that when the district court sentenced him, the district court was misled by the State into believing that appellant confessed during an interview with police officers. Appellant argues that his statements to the police were not actually a confession, but rather were made due to unrelated psychological issues stemming from his military service during the Vietnam War.

Generally, the district court lacks jurisdiction to suspend or modify a sentence after the defendant begins to serve it; however, the district court may consider a motion to modify sentence or motion to correct an illegal sentence in limited circumstances. *Passanisi v. State*, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992); *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 323-24 (1996). A motion to modify 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*, 112 Nev. at 708, 918 P.2d at 324; *see also State v. Eighth Judicial Dist. Court (Husney)*, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984) (“[T]he district court has authority to correct or modify a sentence which is the result of the sentencing judge's misapprehension of a defendant's criminal record.”). 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*, 112 Nev. at 708, 918 P.2d at 324. “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.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)). A guilty plea is presumptively valid, *see Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994), and “[i]ssues concerning the validity of a conviction or sentence . . . must be raised in habeas proceedings,” *Edwards*, 112 Nev. at 708, 918 P.2d at 324. A motion to modify or correct a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

Appellant's claim concerning whether he had actually confessed is a challenge to the validity of his guilty plea. Claims challenging the validity of a guilty plea must be raised in a petition for a writ of habeas corpus filed in compliance with the procedural requirements of NRS Chapter 34. *See id.* at 708, 918 P.2d at 324. While appellant asserts that he suffers from a similar situation to that faced by the defendant in *Husney*, where this court approved of a district court's modification of a sentence, we conclude that the claims are not analogous. There, the district court had a mistaken assumption regarding the role the

defendant played in a series of criminal activities, a mistake relating to his criminal record. *See* 100 Nev. at 98-99, 677 P.2d at 1049-50. In contrast, appellant's claim is that he did not confess, that the State improperly asserted that he confessed, and that the district court should not have relied upon assertions made at the sentencing hearing that appellant confessed to committing the crime to which he pleaded guilty. As clarified by this court in *Edwards*, the scope of a motion to modify sentence is limited to claims that a defendant's sentence was based on mistaken assumptions about the defendant's criminal record which work to the defendant's extreme detriment, 112 Nev. at 708, 918 P.2d at 324, and appellant's claim does not fit within that limited scope. Appellant's claim also does not challenge the facial legality of his sentence and is therefore beyond the scope of a motion to correct an illegal sentence. *See id.* Therefore, we conclude that the district court did not err in denying appellant's motion. *See id.* at 708 n.2, 918 P.2d at 325 n.2.¹


Moreover, even assuming appellant's claim could be construed as one concerning an untrue assumption regarding his criminal record, appellant fails to demonstrate he is entitled to relief. A review of appellant's interview with the police reveals that appellant uttered statements which can reasonably be considered to be admissions related to the allegations that he had committed lewdness with a child under the age


¹In a footnote in appellant's opening brief, appellant appears to assert that his trial counsel was ineffective. Claims of ineffective assistance of counsel are not within the scope of a motion to modify sentence or correct an illegal sentence, and therefore, we decline to consider such a claim in this appeal. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324.

of 14. Therefore, references by the State at the sentencing hearing to appellant's admissions were not improper. In addition, appellant fails to demonstrate that the district court relied upon any erroneous assumptions to his extreme detriment. Appellant's sentence was facially legal, 1997 Nev. Stat., ch. 641, § 19, at 3190; 1999 Nev. Stat., ch. 105, § 5, at 470-72, and there is nothing in the record indicating that the district court was without jurisdiction to impose sentence in this case. Therefore, the district court did not err in denying appellant's motion.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Douglas

cc: Hon. Lidia Stiglich, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk