IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY LEE EGBERTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63131

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant argues that the district court erred by denying his motion to correct an illegal sentence on the ground that his sentence was illegal because no presentence investigation (PSI) report was prepared as required by NRS 176.135. Appellant argues below and on appeal that his sentence is illegal, but he relies on authority addressing the circumstances under which a district court may modify a sentence. A motion to correct an illegal sentence is distinct from a motion to modify a sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) ("We emphasize 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. Motions to correct illegal sentences address only the facial legality of a sentence."). We conclude, however, that under either analysis, appellant has not demonstrated that the district court abused its discretion by denying his motion to correct an illegal sentence.

13-37785

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.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)). Appellant's claim that a PSI report was not prepared as required by NRS 176.135 is outside the scope of claims permitted in a motion to correct an illegal sentence. Additionally, appellant pleaded guilty to conspiracy to commit murder and murder with the use of a deadly weapon; his sentence was facially legal, *see* NRS 193.165 (deadly weapon enhancement); NRS 199.480 (conspiracy); NRS 200.030 (murder), and there is no indication that the district court was not a competent court of jurisdiction.

To the extent appellant sought modification of his sentence based on the absence of a PSI report, that avenue of relief "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. A motion to modify 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. We conclude that appellant's challenge to the absence of a PSI report falls outside the narrow scope of grounds that justify a sentence modification.[1]

---

[1]Even if appellant's challenge to the absence of a PSI report was an appropriate basis to seek modification of his sentence, no relief is

continued on next page . . .

Having considered appellant's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Elliott A. Sattler, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

. . . *continued*

warranted. At the time appellant was sentenced in January 1985, NRS 176.135 provided that a PSI report must be made before the imposition of sentence unless "[w]ith the consent of the court, a defendant waives the presentence investigation and report." 1981 Nev. Stat., ch. 237, § 1, at 464. The record shows that appellant waived the presentence investigation and report. Although he argues that those matters cannot be waived or, if they can, his waiver was not knowing and voluntary, we conclude that the district court did not err by rejecting that contention. Therefore, appellant cannot show that his sentence was based on mistaken assumptions about his criminal record that worked to his extreme detriment. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. We further reject appellant's contention that he was unable to present mitigation evidence because a PSI report was not prepared and that the plea negotiations were coercive in nature. Nothing in the record before us suggests that he was precluded from presenting mitigation evidence.