

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH AARON WILKINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63936

**FILED**

**MAR 12 2014**

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying appellant Kenneth Aaron Wilkins' motion to modify sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Wilkins contends that the district court abused its discretion by denying his motion to modify sentence because it sentenced him based upon the untrue assumption that he stole a firearm. We review a district court's decision whether to modify a defendant's sentence for an abuse of discretion. *See generally Passanisi v. State*, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992) (motion to modify sentence the equivalent of a motion for a new trial); *see also State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993) (denial of a motion for a new trial reviewed for an abuse of discretion).

Here, the same district court judge who sentenced Wilkins considered his motion and concluded that there were no errors in the presentence investigation report, but regardless, it did not rely upon the alleged error when imposing sentence. The record supports the district court's determinations. Because Wilkins failed to demonstrate that the district court sentenced him based on a materially false assumption of fact about his criminal record that worked to his extreme detriment and

violated his right to due process, *see Passanisi*, 108 Nev. at 323, 831 P.2d at 1374; *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996), we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Cherry, J.  
Cherry

cc: Hon. Connie J. Steinheimer, District Judge  
David Kalo Neidert  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk