

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN EDMISTON, A/K/A JUSTIN  
JAMES EDMINSTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67796

**FILED**

**AUG 04 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
*Tracie K. Lindeman*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order denying a motion to correct an illegal sentence.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Justin Edmiston filed his motion on February 9, 2015. The district court elected to construe the motion as a post-conviction petition for a writ of habeas corpus because the claims raised in the motion were more appropriate for a post-conviction petition. Therefore, to the extent that Edmiston's motion could be construed as a post-conviction petition, his petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>2</sup> See NRS 34.810(2). Edmiston's petition was

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude the record is sufficient for our review and briefing is unwarranted. See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>*Edmisten v. State*, Docket No. 66757 (Order of Affirmance, March 17, 2015).


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procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(3).

Edmiston failed to demonstrate any good cause to overcome the procedural bars. Therefore, the district court did not err in concluding the motion would be procedurally barred if construed as a post-conviction petition.

In addition, Edmiston failed to demonstrate his sentence should be modified or that his sentence was illegal. In his motion, Edmiston claimed counsel was ineffective, and that had counsel informed him regarding the grand jury process Edmiston would have requested an appeal and his conviction would have been reversed. Edmiston failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). He also failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See id.* Therefore, we conclude the district court did not err in denying Edmiston's motion, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Michelle Leavitt, District Judge  
Justin Edmiston  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk