

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD EUGENE GARNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68235

FILED

NOV 19 2015

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 “final motion of cognizable issues” and a motion to vacate sentence.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In his motion to vacate sentence filed on February 4, 2013, appellant Edward Garner raised claims of ineffective assistance of counsel relating to his habitual criminal adjudication. We construe the motion to vacate sentence as a motion to modify or correct an illegal sentence. Garner’s claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err in denying the motion.

In his “final motion of cognizable issues” filed on February 22, 2013, Garner claimed that allowing a photograph of him to be shown during trial prejudiced him, he was not properly sentenced as a career criminal, and his counsel was ineffective for failing to challenge his prior


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

convictions at sentencing. No statute or court rule provides for the appeal from such a motion. Therefore, we lack jurisdiction over the denial of this motion. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Moreover, to the extent this motion was construed as a motion to modify or correct an illegal sentence, the claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err in denying the motion.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We have reviewed all documents Garner has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Garner has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Stefany Miley, District Judge
Edward Eugene Garner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk