

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERRY FOSTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75122-COA

FILED

NOV 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gerry Foster appeals from an order of the district court denying a “motion for modification of sentence pursuant to NRS 453.3405(2).”¹ Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

An order revoking Foster’s probation and imposing the underlying term of imprisonment was filed in February 2017. In the instant motion, filed on October 13, 2017, Foster moved the district court to reduce or modify his sentence, claiming it had misapprehended the level of assistance Foster provided to law enforcement. “Generally, a district court lacks jurisdiction to suspend or modify a sentence after the defendant has begun to serve it.” *Passanisi v. State*, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), *overruled on other grounds by Harris v. State*, 130 Nev. 435, 446-47, 329 P.3d 619, 627 (2014). Nothing in the language of NRS 453.3405(2) signals a legislative intent to override the general rule. We

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).

therefore conclude the district court did not err by denying Foster's motion.²
Accordingly, we

ORDER the judgment of the district court AFFIRMED.³



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Elliott A. Sattler, District Judge
Gerry Foster
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Foster conceded that his claim fell outside the exception highlighted in *Edwards v. State*, which limited a motion to modify a sentence to claims of mistaken assumptions regarding a defendant's criminal record that worked to his extreme detriment. 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

³We also conclude the district court did not err by denying Foster's request for the appointment of counsel.