

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75096

FILED

DEC 19 2018

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

ORDER OF REVERSAL AND REMAND

David Lewis appeals from an order of the district court denying a motion for modification of sentence filed on December 11, 2017.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, Lewis identified several alleged errors in his presentence investigation report (PSI) and claimed that, in relying on the report, the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. The district court concluded it lacked jurisdiction to consider Lewis' motion because any objections to a PSI must be made at the time of sentencing.


Although the district court lacked the authority to order an amendment to Lewis' PSI after sentencing, *see Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 249, 255 P.3d 209, 213 (2011), it had "inherent authority to correct, vacate or modify a sentence that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant . . . if the mistaken sentence is the

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).

result of the sentencing judge's misapprehension of a *defendant's criminal record*," *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) (internal quotation marks omitted), regardless of whether the misinformation about the criminal record was from the PSI or some other source. We therefore conclude the district court erred by failing to consider Lewis' motion on its merits, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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

²This court directed the State to respond and specifically to address the district court's conclusion regarding jurisdiction. *Lewis v. State*, Docket No. 75096 (Order Directing Response, October 29, 2018). The State answered and conceded the district court's conclusion was an improper basis for denying the motion. We decline the State's invitation to rule on the merits of Lewis' motion in the first instance.