

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID PHILLIP RUFFA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75182-COA

FILED

JAN 25 2019

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

ORDER OF AFFIRMANCE

David Phillip Ruffa appeals from a district court order denying a motion to modify sentence.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

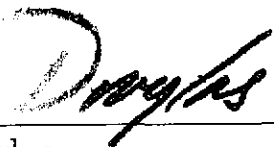
Ruffa claimed his sentence should be modified because his trial was the product of malicious prosecution, DNA evidence was omitted from the trial, mitigating evidence was not presented during sentencing, and the presentence investigation report (PSI) contained several errors.

“[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The district court may summarily deny a motion to modify sentence if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

We conclude the district court did not err by summarily denying Ruffa's motion because he failed to identify the alleged errors in his PSI and his remaining claims fell outside the narrow scope of claims that may be raised in a motion to modify a sentence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

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

²To the extent Ruffa raises a gateway claim of actual innocence in his informal brief, he did not raise this claim in the court below and we decline to consider it for the first time on appeal. *See Rimer v. State*, 131 Nev. 307, 328 n.3, 351 P.3d 697, 713 n.3 (2015).