

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK LAMAR BANKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75906-COA

**FILED**

APR 18 2019

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

*ORDER OF AFFIRMANCE*

Mark Lamar Banks appeals from an order of the district court denying a motion to correct illegal sentence and/or modify judgment of conviction, filed on January 8, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Banks first claimed his sentence was illegal because he was sentenced for first-degree kidnapping with the use of a deadly weapon but was convicted only of first-degree kidnapping. Banks' judgment of conviction stated he was guilty of first-degree kidnapping "as charged in Count IV." And the record supports the district court's finding that count IV's text referenced NRS 193.165, the deadly weapon enhancement statute.<sup>2</sup> Further, count IV alleged Banks "did use a deadly weapon in the

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<sup>1</sup>This 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).

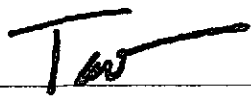
<sup>2</sup>The district court acknowledged the heading for count IV did not include "with the use of a deadly weapon." However, nothing in the statutes in effect at the time suggested that a *heading* within an indictment or judgment of conviction had to include the enhancement language. See 1979 Nev. Stat., ch. 571, § 2, at 1124-25 (NRS 176.105); 1975 Nev. Stat., ch. 437, § 5, at 655-56 (NRS 173.075).

commission of the offense, to wit, chunks of concrete.” From this, we conclude Banks’ conviction was for first-degree kidnapping with the use of a deadly weapon. And Banks did not claim the sentence imposed exceeded the statutory maximum allowed for that enhanced crime. We therefore conclude the district court did not err by denying this claim. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (limiting a motion to correct an illegal sentence to situations where the sentence exceeded the statutory maximum or the district court lacked jurisdiction).<sup>3</sup>

Banks also claimed the Nevada Department of Corrections misinterpreted when he would be eligible for parole on the life sentences he was serving. Banks’ claim is outside the scope of a motion to modify or correct an illegal sentence. *See id.* A challenge to the computation of time served must be raised in a postconviction petition for a writ of habeas corpus. *See* NRS 34.724 (2)(c). We therefore conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>3</sup>To the extent Banks was challenging his indictment or his conviction for kidnapping with the use of a deadly weapon, his claim was a challenge to the validity of his judgment of conviction and was thus outside the scope of claims permissible in a motion to modify or correct an illegal sentence. *See id.*; *see also* NRS 34.724(2)(b).

cc: Hon. Elliott A. Sattler, District Judge  
Mark Lamar Banks  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk