

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE ALLEN FISHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68973

FILED

NOV 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to correct or modify an illegal sentence. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

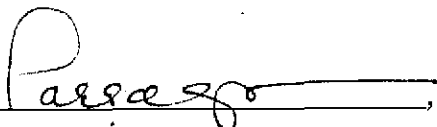
Appellant Dale Allen Fisher first argues that NRS 176A.110 and NRS 176.139 are unconstitutional because they violate the separation of powers. This argument was not raised in the motion filed below or decided by the district court in the proceedings below.¹ Thus, we decline to consider this claim.

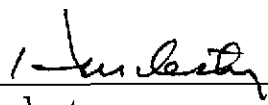
Fisher next argues that the district court erred in relying on the psychosexual evaluation because it was not based on generally accepted scientific principles and the evaluator was biased. This claim fell outside the scope of claims permissible in a motion to correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (holding that a motion to correct an illegal sentence is limited to claims challenging the facial legality of the sentence or the jurisdiction of

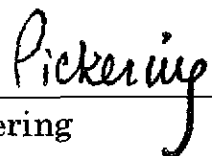
¹Fisher presented this argument at a hearing on the motion, but the district court informed Fisher that it would not consider the argument as it was not raised in the motion and that Fisher should present the argument in a separate motion.

the district court). It also falls outside the scope of a motion to modify sentence as it did not involve a mistake about Fisher's criminal record. *See id.* (holding that 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."). The district court therefore properly denied the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Pickering

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²In light of our disposition, we deny the motion to supplement.