

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS O. BENITEZ, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70669

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Jesus Benitez, Jr. appeals from an order of the district court denying the motion to modify or correct an illegal sentence he filed on April 27, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

In his motion, Benitez claimed his sentence of 50 to 156 years in prison was disproportionate to his crimes and constituted cruel and unusual punishment, the district court erred by refusing to allow him to present witnesses in mitigation at sentencing, the State and presentence investigation report recommended a lower sentence, and the State failed to inform the district court the gun used in the robberies was an air pistol that shot BBs. Benitez's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion,

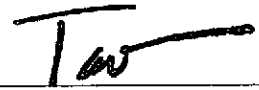
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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

we conclude the district court did not err in denying the motion.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Hon. Kerry Louise Earley, District Judge  
Jesus O. Benitez, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk