

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN DWAYNE MOSBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72773

FILED

MAY 15 2018

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

ORDER REVERSING, VACATING, AND REMANDING

Marvin Dwayne Mosby appeals from a district court order denying the motion to modify or correct an illegal sentence he filed on January 9, 2017. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.


Mosby claims his motion to modify or correct an illegal sentence was the proper vehicle for challenging the district court's jurisdiction to impose his sentence. To this end, Mosby argues the district court lacked jurisdiction to sentence him under the habitual criminal statute because the State failed to file a notice of habitual criminality as is required by NRS 207.010(2); NRS 207.016(2); and *Grey v. State*, 124 Nev. 110, 123-24, 178 P.3d 154, 163-64 (2008).

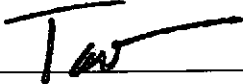
NRS 176.555 states a district "court may correct an illegal sentence at any time." "[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment." *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either

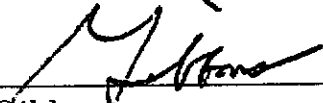
the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum. *Id*

Although we are not convinced the State's failure to file a notice of habitual criminality falls within the narrow scope of claims permissible in a motion to modify or correct an illegal sentence, the Nevada Supreme Court has held district courts lack jurisdiction to sentence defendants under the habitual criminal statutes when the State fails to formally file notices of habitual criminality. *Grey*, 124 Nev. at 124, 178 P.3d at 163-64. Because the State failed to file a notice of habitual criminality in this case, the district court lacked jurisdiction to sentence Mosby under the habitual criminal statutes and consequently Mosby's sentence is illegal. Therefore, we must reverse the district court's order denying Mosby's motion, vacate Mosby's habitual criminal sentence, and remand to the district court for a new sentencing hearing. Accordingly, we

ORDER the judgment of the district court REVERSED, Mosby's habitual criminal sentence VACATED, and the matter REMANDED for a new sentencing hearing.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹In light of our decision, we decline to consider Mosby's remaining claim that the district court improperly construed his motion as a postconviction habeas petition.

cc: Hon. Douglas Smith, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk