

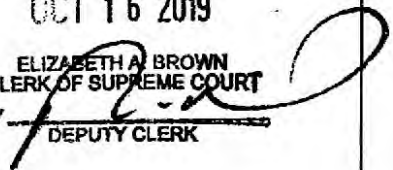
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MANUEL ARTURO ESQUER-ANAYA,  
A/K/A MANUEL A. ESQUERANAYA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78180-COA

**FILED**

OCT 16 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Manuel Arturo Esquer-Anaya appeals from a district court order denying a “Motion to Correct an Illegal Sentence and Vacate Judgment (Modification)” filed on January 3, 2019. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Esquer-Anaya claims the district court erred by denying his motion. Below, Esquer-Anaya claimed his convictions for second-degree murder and child abuse and neglect with substantial bodily harm were redundant because they arose from the same act and, therefore, the imposition of consecutive sentences was illegal. Esquer-Anaya asked the district court to vacate his conviction for child abuse and neglect with substantial bodily harm.

“[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 address only 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.* “A motion to correct an


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illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'" *Id.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)). A motion to modify or correct a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

Esquer-Anaya's claim fell outside the scope of claims permitted in a motion to modify or correct an illegal sentence because it challenged the validity of his conviction. To the extent Esquer-Anaya claimed his consecutive sentences are facially illegal and the district court lacked jurisdiction to impose a consecutive sentence because his convictions are redundant, this claim lacked merit because the Nevada Supreme Court has disapproved of "the 'same-conduct' test for determining the permissibility of cumulative punishment," *Jackson v. State*, 128 Nev. 598, 611, 291 P.3d 1274, 1282 (2012), and the district court had discretion to impose consecutive sentences, NRS 176.035(1). Therefore, we conclude the district court did not err by denying Esquer-Anaya's motion, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Valerie Adair, District Judge  
Manuel Arturo Esquer-Anaya  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk