

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID CULLEN THIESSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78696-COA

FILED

DEC 12 2019

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

ORDER OF AFFIRMANCE

David Cullen Thiessen appeals from a district court order denying a motion to modify a sentence filed on March 22, 2019. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

In his motion, Thiessen claimed that his sentence is facially illegal because its minimum term exceeds the minimum term allowed by the relevant penal statute,¹ the district court intruded “on the executive

¹Thiessen was convicted of burglary and was sentenced to a prison term of 48 to 120 months. His sentence falls within the parameters prescribed by the relevant statute. See NRS 205.060(2) (“[A] person convicted of burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of *not less than* 1 year and a maximum term of not more than 10 years.” (emphasis added)); see also NRS 193.130(1) (“[A] a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which *must be within* the limits prescribed by the applicable statute.” (emphasis added)).

power to determine eligibility for parole,” and “due process violations [created] an improper and illegal sentence in excess of the terms of [his] plea canvass.”

As a general rule, the district court lacks jurisdiction to modify a sentence after the defendant has begun serving it. *Staley v. State*, 106 Nev. 75, 79, 787 P.2d 396, 398 (1990), *overruled on other grounds by Hodges v. State*, 119 Nev. 479, 484, 78 P.3d 67, 70 (2003). There are three exceptions to this rule. First, for reasons of due process, a district court may “correct, vacate or modify a sentence that is based on a materially untrue assumption or mistake of fact that has worked to the extreme detriment of the defendant, but only if the mistaken sentence is the result of the sentencing judge’s misapprehension of a defendant’s criminal record.” *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) (internal quotation marks and emphasis omitted). Second, a district court has the inherent authority to correct a facially illegal sentence. *Id.* at 707-08, 918 P.2d at 324; *see also* NRS 176.555. And, third, the district court may correct clerical mistakes in judgments at any time. NRS 176.565.

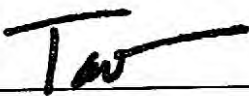
We conclude the district court did not err by denying Thiessen’s motion because Thiessen failed to demonstrate that the district court relied upon mistaken assumptions about his criminal record, his sentence is

facially illegal, or the judgment of conviction contains a clerical error.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Elliott A. Sattler, District Judge
David Cullen Thiessen
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²To the extent that Thiessen challenges the validity of his guilty plea, his challenges are not properly raised in a motion to modify a sentence. See *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (“a post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing”).