

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JULIUS HAYWORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77582-COA

**FILED**

FEB 11 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Michael Julius Hayward appeals from a district court order denying a motion to amend or correct a judgment of conviction.<sup>1</sup> Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Hayward argues the district court erred by denying his motion. Below, Hayward argued that his judgment of conviction does not identify the section under NRS 200.368 that he was convicted under and he was improperly convicted of felony statutory sexual seduction. He argued that because he was only 19 years old when he committed the offenses of statutory sexual seduction, under NRS 200.368(2), he could only be convicted of a gross misdemeanor for each offense. He contended that, as a

---

<sup>1</sup>On July 25, 2019, the Nevada Supreme Court denied the State's motion to dismiss this appeal on the basis that the motion filed below appeared to be similar to a motion to correct or modify an illegal sentence and an order denying such a motion is appealable. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The Nevada Supreme Court, however, reserved the right to reconsider this decision with resolution of this appeal. On appeal, the State argues this appeal should be dismissed for lack of jurisdiction. We conclude we have jurisdiction over this appeal for the reasons set forth by the Nevada Supreme Court. *See Hayward v. State*, Docket No. 77582 (Order Denying Motion, July 25, 2019).

result of his designation as a felon, he is being improperly classified as a tier III offender under NRS 179D.117.


“[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*, 112 Nev. at 708, 918 P.2d at 324. 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 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.

The record demonstrates that Hayward agreed to plead guilty to two *felony* counts of statutory sexual seduction under NRS 200.364 and NRS 200.368, and he agreed to waive any defects regarding his age. Hayward was informed in his guilty plea agreement that he would be subject to a prison term of one to five years for each count, which corresponds to a sentence for a category C felony as was required by NRS 200.368(1) at the time he was convicted. *See* 1995 Nev. Stat., ch. 443, § 59, at 1187; 2019 Nev. Stat., ch. 633, § 51.5, at 4419-20 (NRS 193.130(2)(c)). Hayward was sentenced to two consecutive terms of two to five years and placed on probation for a period not to exceed five years. Hayward failed to demonstrate his sentence was based upon mistaken assumptions about his criminal record that worked to his extreme detriment or that his sentence

was illegal. Accordingly, we conclude the district court did not err by denying Hayward's motion, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Tierra Danielle Jones, District Judge  
The Gersten Law Firm PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>2</sup>Although we conclude the district court did not err by denying Hayward's motion, we note it appears his judgment of conviction contains a clerical error. The judgment of conviction states that Hayward was convicted of "Count III and Count IV – Statutory Sexual Seduction (Category B Felony), committed on the 14<sup>th</sup> day of June, 1999, in violation of NRS 200.364, 200.366." Statutory sexual seduction, however, is a violation of NRS 200.368, not NRS 200.366, and it was a category C felony at the time Hayward committed his offense. See 1995 Nev. Stat., ch. 443, § 59 at 1187. It is unclear whether this clerical error is affecting Hayward's offender tier level. Compare NRS 179D.117, with NRS 179D.113, and NRS 179D.115. We encourage the district court to inquire into whether the judgment of conviction contains a clerical error and, if present, to correct any such error. See NRS 176.565.