

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN MILLER, A/K/A DUSTON
MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79092-COA

FILED

MAR 12 2020

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

ORDER OF AFFIRMANCE

Dustin Miller appeals from an order of the district court denying a motion to modify and/or correct an illegal sentence filed on May 13, 2019. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Miller argues the district court erred by denying his claim that because the State did not file a proper notice of intent to seek habitual felon treatment, his sentence should be modified and the district court was without jurisdiction to sentence him as a habitual felon.

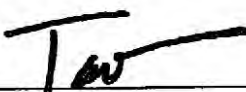
First, Miller failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, he failed to demonstrate his sentence should be modified.

Second, while the State incorrectly titled the pleading as a "notice of intent to seek punishment as a habitual criminal," the State correctly cited to NRS 207.012 and alleged the necessary requisite prior felonies to qualify Miller for habitual felon treatment. Miller was properly put on notice that the State was seeking habitual felon treatment. *Cf.*

LaChance v. State, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014) (“[T]he clear purpose of [filing a notice of habitual criminality] is to ensure that the defendant has notice that the State will request habitual criminal adjudication.”). Therefore, Miller failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. *See id.* Accordingly, we conclude the district court did not err by denying Miller’s motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Dustin Miller
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk