

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO COUNT BARBOZA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ANTONIO COUNT BARBOZA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81440-COA

FILED

DEC 28 2020

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

No. 81441-COA ✓

ORDER OF AFFIRMANCE

Antonio Count Barboza, Jr., appeals from district court orders denying identical “motion[s] for change or modification of sentence.” Barboza filed both motions on February 14, 2020. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge, and Valerie Adair, Judge.¹

Barboza first appeared to claim some of the convictions used to qualify him for habitual criminal treatment were later overturned. Barboza did not specify, let alone demonstrate, which convictions were overturned. Accordingly, he failed to establish the district courts relied upon any alleged errors in his criminal history that worked to his extreme detriment.

¹Judge Herndon denied the motion filed in district court case number C-14-300520-1 (Docket No. 81440). Judge Adair denied the motion filed in district court case number C-15-307818-3 (Docket No. 81441).

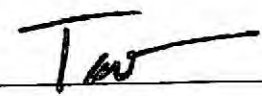
Therefore, we conclude the district courts did not err by denying this claim. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Barboza next claimed the courts should apply the recent amendments to NRS 207.010(1)(a) retroactively and remove his habitual criminal sentencing enhancements. Sentencing statutes will not be applied retroactively unless the Legislature clearly expresses its intent otherwise. *State v. Second Judicial Dist. Court*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). The Legislature made the amendments to NRS 207.010 effective on July 1, 2020. *See* 2019 Nev. Stat., ch. 633 § 86, at 4441, § 137, at 4488. Accordingly, they do not apply to Barboza's sentences for the crimes he committed in 2014. *See* NRS 207.010. Therefore, we conclude the district courts did not err by denying this claim.

To the extent Barboza challenged the legality of his sentences, he did not allege his sentences were facially illegal or either district court exceeded its jurisdiction. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, we conclude the district courts did not err by denying Barboza's motions. Accordingly, we

ORDER the judgments of the district courts AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Hon. Valerie Adair, District Judge
Antonio Count Barboza, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk