

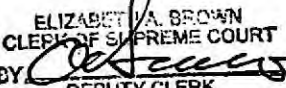
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELVIS WELLS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81108-COA

FILED

MAR 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Elvis Wells, Jr., appeals from a district court order denying a motion to modify and/or correct an illegal sentence filed on February 27, 2020. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In his motion, Wells claimed the sentencing court relied on mistaken assumptions about his criminal history when sentencing him as a habitual criminal because his 2007 convictions arose out of similar conduct and they were consolidated for sentencing. “[W]here two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized only as a single “prior conviction” for purposes of applying the habitual criminal statute.” *Rezin v. State*, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

Here, Wells committed the crimes underlying his 2007 convictions a month apart. Further, they were charged in separate indictments, he was sentenced separately for each conviction, and separate judgments of conviction were entered. Therefore, he failed to demonstrate that the 2007 convictions grew out of the same act, transaction, or

occurrence or that they were prosecuted in the same indictment or information. Thus, Wells 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). Further, he failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. *See id.* Therefore, we conclude the district court did not err by denying this claim.

Next, Wells claimed his 2007 convictions were constitutionally infirm because he was not informed those convictions could be used to enhance his sentence for a later conviction. A motion to modify or correct an illegal sentence is not a proper vehicle for challenging the constitutional validity of a prior conviction. Therefore, we conclude the district court did not err by denying this claim.

Finally, Wells claimed he should receive the benefit of a change in the habitual criminal statutes that went into effect in 2020. This claim fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See id.* Therefore, without considering the merits of the claim, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Elvis Wells, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk