

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AVERY ALLEN CHURCH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81546-COA

FILED

APR 28 2021

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

ORDER OF AFFIRMANCE

Avery Allen Church, Jr., appeals from a district court order denying a motion to modify sentence filed on June 8, 2020. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

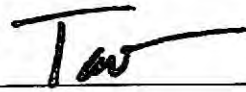
Church claimed that one of the convictions used to qualify him for habitual criminal treatment was not entered until after the commission of the primary offenses. A defendant may seek to modify his sentence where the sentence was based on mistaken assumptions about the defendant's criminal record that worked to his extreme detriment. *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

The indictment in the instant case alleged that Church committed the primary offenses on December 22, 2005, and March 8, 2006. In its notice of intent to seek habitual criminal treatment, filed on June 6, 2006, the State listed four prior felony convictions in support of its intent to enhance Church's punishment, including a 2005 conviction for robbery. Church alleged a judgment of conviction was not entered for that conviction until after the commission of the primary offenses, in violation of *Brown v. State*, 97 Nev. 101, 102, 624 P.2d 1005, 1006 (1981) ("All prior convictions used to enhance a sentence must have preceded the primary offense.").

However, the judgment of conviction was entered on November 8, 2005. Because Church's prior robbery conviction preceded the primary offenses it was used to enhance, Church fails to establish the sentencing court relied upon any alleged errors in his criminal history that worked to his extreme detriment. Therefore, 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. Mary Kay Holthus, District Judge
Avery Allen Church, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk