

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARRON JASON LAIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81397-COA

FILED

JAN 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Arron Jason Lair appeals from an order of the district court denying a motion to modify or correct an illegal sentence. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Lair argues the district court erred by denying his February 28, 2020, motion. In his motion, Lair claimed the sentencing court improperly adjudicated him as a habitual criminal because his prior California felony convictions were eligible to be reduced to misdemeanor convictions pursuant to California Proposition 47. Therefore, Lair asserted that the sentencing court should not have considered those prior felony convictions when it adjudicated him as a habitual criminal.

“[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 v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (2008). A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district

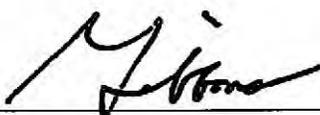
court was without jurisdiction to impose a sentence, or the sentence was imposed in excess of the statutory maximum. *Id.* A motion to modify or correct an illegal sentence may be summarily denied if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

The record demonstrated that the State provided the sentencing court with proof that Lair had four prior felony convictions, including two California felony convictions. Lair acknowledged in his reply to the State's opposition to his motion that he did not petition the California courts to reclassify his felony convictions to misdemeanors until 2018, approximately 2 years after sentence was imposed in this matter. Because Lair's convictions were felonies when the sentencing court imposed sentence, Lair did not demonstrate that his sentence was based upon mistaken assumptions about his criminal record that worked to his extreme detriment. Moreover, Lair did not demonstrate that the sentencing court was without jurisdiction to impose a sentence or that his sentence was imposed in excess of the statutory maximum. Therefore, we conclude the district court did not err by denying Lair's motion.

Next, Lair argues on appeal that the sentencing court abused its discretion by imposing a sentence that constitutes cruel and unusual punishment. Lair also argues that his sentence should be modified to reflect the amendments to the habitual criminal enhancement contained within Assembly Bill 236. However, Lair did not raise these claims in his motion.

We decline to consider arguments not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
The Law Office of Dan M. Winder, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The district court denied Lair's motion as procedurally barred because Lair did not raise his claim in a timely manner and did not demonstrate good cause for his failure to do so. However, "time constraints and procedural defaults . . . do not apply" to motions to modify or correct an illegal sentence. *Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, the district court erred by denying the motion as procedurally barred. Nevertheless, we affirm the decision of the district court because it reached the correct result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).