

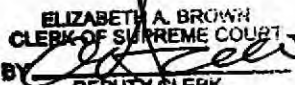
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MICHAEL STEINHAUER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83828-COA

FILED

MAY 05 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Michael Steinhauer appeals from an order of the district court denying a motion to modify or correct an illegal sentence. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Steinhauer argues the district court erred by denying his August 26, 2021, motion. In his motion, Steinhauer asserted that the State improperly requested the sentencing court to adjudicate him as a habitual felon pursuant to NRS 207.012. Steinhauer claimed that his prior felony conviction of battery with the intent to commit sexual assault should not have been utilized to adjudicate him as a habitual felon because NRS 207.012 was not effective when he committed that offense and utilizing that prior conviction to enhance his sentence constituted a violation of the Ex Post Facto Clause.

“[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 (1996). 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 correct an


illegal sentence presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence." *Id.* (internal quotation marks omitted).

When Steinhauer committed the kidnapping and sexual assault offenses at issue in this matter in 2001, NRS 207.012 was effective and available to be utilized to enhance Steinhauer's sentences for his conviction of those offenses. *See* 1997 Nev. Stat., ch. 314, § 9, at 1185; 1997 Nev. Stat., ch. 314, § 23, at 1193 (effective date of October 1, 1997). Because NRS 207.012 was enacted before he committed the crimes at issue in this matter, its application did not violate the Ex Post Facto Clause. *See Weaver v. Graham*, 450 U.S. 24, 29 (1981). In addition, Steinhauer's prior felony conviction of battery with the intent to commit sexual assault was properly considered for purposes of enhancing Steinhauer's sentence because that offense plainly constituted one of the felonies enumerated within NRS 207.012(2).

Accordingly, Steinhauer did not demonstrate that his sentence was based upon mistaken assumptions regarding his criminal record. Moreover, Steinhauer did not demonstrate that the district court was without jurisdiction to impose a sentence or that the sentence imposed was in excess of the statutory maximum. Therefore, we conclude the district court did not err by denying the motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Barry L. Breslow, District Judge
David Michael Steinhauer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk