

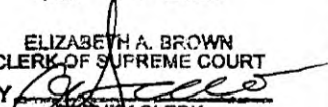
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAAIM WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84055-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saaim Washington appeals from an order of the district court denying a motion to modify or correct an illegal sentence filed on November 24, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In his motion, Washington claimed the sentencing court relied on a mistaken assumption regarding his criminal record: that Washington had previously served time in prison. The sentencing court made no reference to Washington's criminal history or whether he had previously served time in prison. Rather, the court's comments were focused on Washington's having been arrested on new charges and the results of his psychosexual evaluation. Washington thus failed to demonstrate that any mistaken assumptions regarding his criminal record worked to his extreme detriment. Therefore, we conclude Washington is not entitled to relief on this claim. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Washington also claimed the sentencing court mistakenly believed that he was a high risk to reoffend. 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 this claim, we conclude the district court did not err by denying this claim.


Next, Washington appears to claim on appeal that the district court erred by conducting a hearing on his motion outside his presence. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1006). The hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely denied the motion. Washington fails to demonstrate he was prejudiced by his absence. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner’s statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Therefore, we conclude that he is not entitled to relief on this claim.


Finally, Washington appears to claim on appeal that he was unable to challenge the grounds for the district court’s denial of his motion because he was never served a copy of the State’s opposition, which provided the basis for the district court’s order. Because the claims presented in Washington’s motion did not warrant relief, we cannot conclude that his substantial rights were affected. *See* NRS 178.598 (“Any error, defect,

irregularity or variance which does not affect substantial rights shall be disregarded.”). Therefore, we conclude Washington is not entitled to relief on this claim, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Saaam Washington
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Washington appears to raise several new claims on appeal. We decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).