

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON MARCUS LEATH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86400-COA

FILED

OCT 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE


Brandon Marcus Leath appeals from an order of the district court denying a motion to modify or correct an illegal sentence filed on January 25, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, Leath claimed that counsel was ineffective for failing to properly handle plea negotiations and for failing to present his psychological evaluation at sentencing. “[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.* However, such a motion cannot be used to challenge the validity of the conviction or sentence based on alleged errors that occurred at trial or sentencing. *Id.* The district court may summarily deny a motion to modify or correct an illegal sentence 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.

Without considering the merits of Leath's claims, we conclude they fall outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. Therefore, we conclude the district court did not err by denying Leath's motion, and we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Brandon Marcus Leath
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We have reviewed all documents Leath has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Leath attempts to present claims or facts in his filings on appeal that were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).