

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARC ANTHONY EARLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88032-COA

FILED

AUG 01 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Marc Anthony Earley appeals from a district court order denying a motion to modify and/or correct an illegal sentence filed on December 6, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion, Earley claimed the presentence investigation report (PSI) erroneously stated he had been to prison four times when he had only been to prison twice. “[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

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that occur prior to the imposition of sentence.” *Id.* (internal quotation marks omitted).

Even assuming the PSI erroneously listed the number of times Earley had been to prison, this claim does not implicate the facial legality of Earley’s sentence, and Earley failed to demonstrate any such error worked to his extreme detriment. The PSI indicates Earley’s criminal record includes seven prior criminal cases, and Earley did not contend that any of the specific convictions or corresponding sentences identified in the PSI are incorrect. Moreover, Earley’s claim did not implicate the State’s argument at sentencing that Earley had incurred seven felony convictions before he was 30 years old, and the district court did not indicate that it imposed concurrent sentences of 10 years to life in prison because Earley had been to prison four times. Therefore, we conclude the district court did not err by denying this claim.

Earley also claimed that (1) amendments to the habitual criminal statute should be applied to him; (2) the district attorney tried to split a prior criminal case into two separate felonies in its amended notice of intent to seek punishment as a habitual criminal; (3) this amended notice was incorrectly addressed to prior counsel; (4) one of the prior felonies identified in the amended notice is no longer a felony under Ohio law; and (5) the Division of Parole and Probation had recommended a sentence of 10 to 25 years in prison. These claims did not allege that a mistaken assumption about Earley’s criminal record worked to his extreme detriment or that Earley’s sentence was facially illegal. Therefore, without considering the merits of these claims, we conclude that they fall outside

the narrow scope of claims permissible in a motion to modify and/or correct an illegal sentence. Accordingly, we conclude the district court did not err by denying the motion.

On appeal, Earley contends the district court failed to explain why it denied his motion. The district court may summarily deny a motion to modify and/or correct an illegal sentence if the motion raises issues that fall outside of the very narrow scope of issues permissible in such a motion. *Edwards*, 112 Nev. at 708 n.2, 918 P.2d at 325 n.2. As previously discussed, several of Earley's claims were outside the narrow scope of claims permissible in a motion to modify and/or correct an illegal sentence; thus, the district court did not err by summarily denying these claims. Moreover, the district court's failure to issue specific findings of fact or conclusions of law with respect to Earley's remaining claim has not hampered this court's ability to review the claim on appeal. Therefore, we conclude Earley is not entitled to relief on this claim. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Earley also appears to argue that his sentence should be modified and/or corrected because (1) he never had a habitual hearing, (2) Nevada's statutes are different than the laws in other states, (3) he has a disease and is not receiving proper medical treatment, (4) Nevada prisons are crowded, (5) he has had no violent rule violations while in prison and no rule violations at all in three years, and (6) he has provided evidence in other cases that has put his life in danger. These arguments were not raised

below, and we decline to consider them on appeal in the first instance. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.



\_\_\_\_\_, C.J.  
Gibbons



\_\_\_\_\_, J.  
Bulla



\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michelle Leavitt, District Judge  
Marc Anthony Earley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk