

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NORMAN RENORD SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87309-COA

**FILED**

OCT 04 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Norman Renord Smith appeals from a district court order denying a motion for modification of sentence filed on November 27, 2019, and supplement. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In his motion, Smith claimed the sentencing court imposed his aggregate prison sentence of 10 to 39 years because it mistakenly believed he was guilty of murdering a pregnant woman in a separate criminal case. Smith contended that he was ultimately found not guilty of first-degree murder in the separate case and was instead convicted of voluntary manslaughter with the use of a deadly weapon. Smith also contended that he was acquitted of a separate charge of manslaughter, killing of an unborn quick child.

“[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). There is no indication in the record that the district court relied on a mistaken assumption about Smith’s criminal record in imposing Smith’s sentence. Defense counsel argued Smith did not

have a criminal history, and the State did not argue otherwise. Smith does not contend that the presentence investigation report contained inaccurate information about his criminal history. We are not convinced Smith's claim that the sentencing court erroneously considered his alleged actions in a separate criminal case falls within the narrow scope of claims permissible in a motion to modify a sentence. *See id.*

Even assuming Smith's claim was properly raised, he has not demonstrated he is entitled to relief. At the sentencing hearing, the State argued, *inter alia*, that Smith had been charged with murder in a separate case because he killed a pregnant woman while he was out on bail in this case. Defense counsel argued that Smith "had no wrong doing in that particular case" and that it was inappropriate to argue the facts of that case for the purpose of determining Smith's sentence in this case. The sentencing court stated that Smith was innocent until proven guilty in that case, but it noted Smith's out-of-custody status had changed, which indicated that "something happened" and that Smith "wasn't home reading a book."

The sentencing court's statements do not indicate that it mistakenly believed Smith had killed a pregnant woman in another case.<sup>1</sup> Rather, the court explicitly acknowledged that Smith was innocent until proven guilty in that case. Moreover, even if the district court had considered Smith's alleged conduct in the other case, Smith fails to demonstrate the district court was prohibited from considering criminal conduct unrelated to the instant case. *See Sheriff v. Morfin*, 107 Nev. 557, 560, 816 P.2d 453, 455 (1991) ("Other criminal conduct may properly be

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<sup>1</sup>We note that Smith concedes that he was ultimately convicted of voluntary manslaughter with the use of a deadly weapon in his other case.

considered at the sentencing hearing, even though the defendant was never charged or convicted of it.”); *see also Denson v. State*, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (stating a sentencing court may not punish a defendant for other criminal conduct but may consider it “for the purpose of gaining a fuller assessment of the defendant’s life, health, habits, conduct, and mental and moral propensities” (internal quotation marks omitted)).

In light of the foregoing, we conclude the district court did not err by denying Smith’s motion for modification of sentence.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Patricia M. Erickson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>To the extent Smith contends on appeal that the district court erred by considering other arguments made by the State at sentencing, Smith did not raise these claims in his motion 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).