

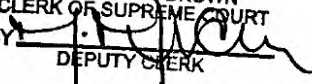
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNY HAMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87788-COA

FILED

NOV 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Benny Hammons appeals from a district court order denying a motion to modify a sentence filed on August 28, 2023. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

Hammons argues that the district court erred by denying the claims raised in his motion as outside the scope of a motion to modify a sentence. “[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).

First, Hammons argues the district court erred by denying his claim that the sentencing court misapprehended his criminal record when it mistakenly believed Hammons had not entered guilty pleas in his previous 13 convictions.¹ Hammons claims the sentencing court’s

¹Hammons also claims that the sentencing court did not appear to read through his criminal history because the sentencing court noted the lengthiness of the packet provided by the State. This statement by the sentencing court was made in relation to the fact that the State presented all 11 prior judgments of conviction rather than just the threshold number of prior judgments for habitual criminal treatment. Further, at the

statement that “you don’t ever fess up to anything” shows the sentencing court did not understand he had pleaded guilty in his prior cases.

Hammons fails to demonstrate he is entitled to relief because he has not shown any mistaken assumption about his previous pleas worked to his extreme detriment. Aside from the one comment about which Hammons argues, the sentencing court made no mention of Hammons’ previous pleas or how they influenced the court. Instead, the sentencing court stated that Hammons “epitomize[d] a career criminal” and that he had been a criminal the majority of his adult life before indicating Hammons would get a lengthy sentence. The sentencing court also noted it would have imposed a more severe sentence but decided to go with the lesser sentence recommended by the State. Therefore, Hammons fails to demonstrate he is entitled to relief on this claim.

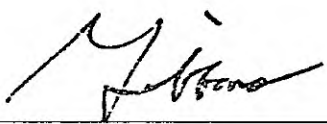
Second, Hammons argues the district court erred by denying his claim that the sentencing court misapprehended his criminal record because it did not consider his mental health history when imposing sentence. Hammons argues that his mental health history was part of his criminal record because it informed why he committed his crimes.

Hammons fails to provide authority to support his claim that mental health history is a part of a defendant’s criminal record. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating “[i]t is

sentencing hearing, the sentencing court made statements indicating it had reviewed Hammons’ criminal history. The sentencing court noted that Hammons had served 11 prison sentences on 13 felony convictions and that most of them were from Ohio, one from Michigan, and one from Nevada. The district court also noted Hammons’ criminal history spanned from 1984 until 2009. Thus, it is clear from the record the district court reviewed Hammons’ criminal history.

appellant's responsibility to present relevant authority and cogent argument"). But even assuming a defendant's mental health history is a part of their criminal record, Hammons fails to demonstrate his sentence was based on a mistaken assumption. Hammons did not present any mental health history at sentencing and thus the sentencing court did not have any information to misapprehend. Therefore, Hammons fails to demonstrate he is entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jennifer L. Schwartz, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk