

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MICHAEL STEINHAUER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88706-COA

FILED

DEC 24 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Michael Steinhauer appeals from a district court order denying a motion to modify or correct an illegal sentence filed on March 8, 2024. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

In his motion, Steinhauer claimed the sentencing court erroneously relied upon his 1996 conviction for battery with the intent to commit sexual assault in adjudicating him a habitual felon. Steinhauer contended that this prior conviction was not a qualifying prior conviction for enhancement purposes because he was convicted of violating NRS 200.400(2), and the habitual felon statute, NRS 207.012, only allowed a conviction under NRS 200.400 to be used for habitual felon adjudication if the conviction was specifically pursuant to NRS 200.400(3) or (4).

“[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.* 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.

Steinhauer's claim that the sentencing court erred in relying upon a specific prior conviction to adjudicate him a habitual felon does not implicate the facial legality of his sentence.¹ Therefore, without considering the merits of this claim, we conclude that it falls outside the narrow scope of claims permissible in a motion to correct an illegal sentence.

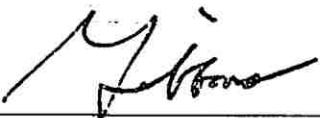
We are also not convinced that Steinhauer's claim is within the narrow scope of claims permissible in a motion to modify sentence. However, even if Steinhauer's claim were properly raised in such a motion, we conclude that Steinhauer's claim lacks merit.

Steinhauer was previously convicted of battery with the intent to commit sexual assault. The offense occurred in June 1993, and Steinhauer was convicted pursuant to then-NRS 200.400(2). *See* 1991 Nev. Stat., ch. 63, § 1, 123-24. Thereafter, the Legislature enacted Senate Bill (S.B.) 416, which (1) amended NRS 200.400, moving the offense of battery with the intent to commit sexual assault from NRS 200.400(2) to NRS

¹Steinhauer's claim does not implicate the district court's jurisdiction to impose a habitual felon sentence, *see Grey v. State*, 124 Nev. 110, 124, 178 P.3d 154, 163-64 (2008) (stating "the district court's authority to impose a habitual criminal sentence [is premised] on the State's filing of an allegation of habitual criminality"), nor does it allege that his sentence exceeds the maximum sentence permitted by statute, *see* 1997 Nev. Stat., ch. 314, § 9, at 1185 (stating a habitual felon may be sentenced to life in prison without the possibility of parole); *see also Dawson v. State*, 140 Nev., Adv. Op. 72, ___ P.3d ___, ___ (2024) (holding that "the operative statute for habitual criminal adjudication is the one in effect when the charged crime was committed, not the one in effect at the time of sentencing").

200.400(4); and (2) added NRS 207.012 and provided that a prior felony conviction under NRS 200.400(4) may be used for habitual felon adjudication. *See* 1995 Nev. Stat., ch. 443, §§ 62, 180, at 1188-89, 1237-38. In so providing, the Legislature clearly contemplated that a prior conviction for battery with the intent to commit sexual assault may be used in adjudicating a defendant a habitual felon. The fact that Steinhauer was convicted of battery with the intent to commit sexual assault before it was recodified as NRS 200.400(4) is of no consequence and did not preclude the sentencing court from considering that conviction in adjudicating him a habitual felon. Therefore, Steinhauer failed to demonstrate that his sentence was based on a mistaken assumption about his criminal record that worked to his extreme detriment, and we conclude the district court did not err by denying Steinhauer's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
David Michael Steinhauer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk