

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HECTOR LEONARD JARDINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89082-COA

FILED

MAY 06 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Hector Leonard Jardine appeals from a district court order denying a motion to modify or correct an illegal sentence filed on April 11, 2024. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Jardine argues the district court erred by denying his motion to modify or correct an illegal sentence. In his motion, Jardine claimed (1) the sentences imposed for the deadly weapon enhancements exceeded the statutory maximum, (2) the sentencing court failed to state on the record that it had considered the factors required by NRS 193.165(1) before imposing the sentences for the deadly weapon enhancements, and (3) the 2007 amendments to NRS 193.165 apply to him.

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

“It is well established that under Nevada law, the proper penalty is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing.” *State v. Second Jud. Dist. Ct. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Here, Jardine was convicted, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, burglary, first-degree kidnapping with the use of a deadly weapon with substantial bodily harm, and sexual assault with the use of a deadly weapon. The offenses occurred in 2006. At that time, “NRS 193.165 mandated that a defendant serve an equal and consecutive sentence for the use of a deadly weapon in the commission of the primary offense.” *Id.*; *see also* 1995 Nev. Stat., ch. 455, § 1, at 1431. Because the sentences imposed for the deadly weapon enhancements were equal and consecutive to the sentences imposed for the primary offenses,¹ Jardine failed to demonstrate the sentences exceeded the statutory maximum.

As to Jardine’s claim that the sentencing court failed to state on the record it had considered the factors required by NRS 193.165(1), this claim is outside the scope of a motion to modify or correct an illegal sentence because it does not challenge the facial legality of his sentence nor allege any mistaken assumptions about his criminal record that worked to his

¹Jardine was sentenced to equal and consecutive prison terms of 2 to 10 years for attempted murder with the use of a deadly weapon, 15 years to life for first-degree kidnapping with the use of a deadly weapon with substantial bodily harm, and 10 years to life for sexual assault with the use of a deadly weapon.

extreme detriment.² Further, Jardine's claim that the 2007 amendments to NRS 193.165 apply to him is foreclosed by *Pullin*, which specifically held that the 2007 amendments to NRS 193.165 do not apply retroactively and that the penalty for the deadly weapon enhancement is "the one in effect at the time the defendant used a weapon to commit the primary offense."³ 124 Nev. at 572, 188 P.3d at 1084. Therefore, Jardine failed to demonstrate that his sentence was facially illegal or that the sentencing court relied on mistaken assumptions about his criminal record which worked to his extreme detriment. Accordingly, we conclude the district court did not err by denying the motion.

Jardine also argues his sentence was based on materially untrue assumptions or mistakes which worked to his extreme detriment. In particular, Jardine contends his sentence was based on crimes not committed or charged and on false or misleading testimony by two experts. Jardine also contends his due process rights were violated because the two experts were not noticed. Jardine did not raise these claims in his motion below, and we decline to consider them for the first time on appeal. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).


²We note that NRS 193.165(1) did not require the sentencing court to state on the record that it had considered certain factors at the time Jardine committed the underlying offenses. See 1995 Nev. Stat., ch. 455, § 1, at 1431.


³To the extent Jardine challenges the supreme court's decision in *Pullin* by arguing the 2007 amendments to NRS 193.165 were merely "clarifying" amendments and contends that the Legislature intended for the amendments to reduce the prison population, "this court cannot overrule Nevada Supreme Court precedent." *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 n.7 (Ct. App. 2023).

Finally, Jardine argues that the district court did not give him adequate time to file a reply to the State's opposition and that the district court did not state its reasons for denying the motion. As previously discussed, Jardine did not demonstrate his sentence was facially illegal or based on mistaken assumptions about his criminal record which worked to his extreme detriment. Therefore, we conclude Jardine is not entitled to relief on these claims. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Hector Leonard Jardine
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk