

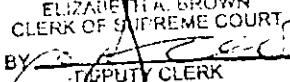
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN
A/K/A STEVEN SAMUEL JALBERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89539-COA

FILED

MAY 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Samuel Braunstein appeals from a district court order denying a “motion to modify judgment and correct an illegal sentence” filed on August 12, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Braunstein argues the district court erred by denying his motion without conducting an evidentiary hearing. In his pleadings below, Braunstein claimed that because the district court previously vacated the restitution award, his conviction for felony attempted possession of stolen property should be reclassified as a misdemeanor as the valuation of the property underlying his conviction “has since been discredited.” And because his crime was a misdemeanor, Braunstein alleged that the district court improperly relied on materially untrue assumptions in imposing his sentence and that his resulting prison sentence was illegal.

“[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).

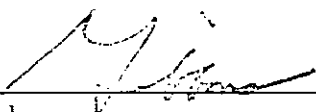
Braunstein pleaded guilty to the offense contained in the second amended information, which alleged that on or about October 15, 1997, Braunstein “willfully, unlawfully, and feloniously” committed attempted possession of stolen property with a value of \$250 or more. Based on these facts, the offense could have been adjudicated as either a category D felony or a gross misdemeanor. *See* 1997 Nev. Stat., ch. 150, § 18, at 344; 1997 Nev. Stat., ch. 314, § 2, at 1178. The guilty plea agreement provided that Braunstein understood the district court could treat the offense as a felony or a gross misdemeanor, and Braunstein affirmed this understanding during the plea canvass. In addition, during the plea canvass, Braunstein agreed that the collective value of the property at issue exceeded \$250.


Braunstein’s claim regarding the vacated restitution award did not implicate the jurisdiction of the district court to sentence him pursuant to his guilty plea to the offense. *See* Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the courts’ statutory or constitutional *power* to adjudicate the case.” (internal quotation marks omitted)). And based on the record before this court, it is clear Braunstein was convicted of felony attempted possession of stolen property. Thus, the district court properly relied on the felony conviction in imposing Braunstein’s sentence, and the sentence imposed did not exceed the maximum sentence allowable under the controlling statutes. For these reasons, we conclude the district court did

not err in denying Braunstein's motion without conducting an evidentiary hearing.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Bulla C.J.


Gibbons J.


Westbrook J.

cc: Hon. Mary Kay Holthus, District Judge
Steven Samuel Braunstein
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent Braunstein challenged the validity of his judgment of conviction, this claim was outside the scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324.