

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOE EDWARD HUDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89660-COA

FILED

JAN 27 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joe Edward Hudson appeals from a district court order denying a motion to modify or correct an illegal sentence and a motion to obtain and unseal records filed on June 25, 2024. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Hudson argues the district court erred by denying his motion to modify or correct an illegal 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). 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). 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.

In his motion, Hudson claimed (1) the sentencing court erroneously relied upon prior uncharged robberies in determining whether to adjudicate him a habitual criminal in violation of NRS 207.010 and *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (2) the sentencing court failed to give him notice of, or a meaningful opportunity to be heard regarding, the documents it relied upon when discussing the prior uncharged robberies; and (3) he was sentenced based on materially untrue assumptions that he had robbed and tortured individuals on December 31, 1975, and had deliberately shot the victim of his prior murder conviction.

After review, we conclude Hudson's first two claims fall outside the narrow scope of claims permissible in a motion to modify sentence. As to Hudson's third claim, Hudson failed to demonstrate that the sentencing court relied on any mistaken assumptions. Although Hudson claimed in his motion that he did not rob and torture individuals on December 31, 1975, this assertion does not constitute evidence. *See* 56 Am. Jur. 2d *Motions, Rules, and Orders* § 2 ("A motion cannot prove itself; representations, arguments of counsel, allegations and statements made in motions are not evidence, and allegations in motions do not amount to any proof of the facts stated." (internal citations omitted)).

Moreover, Hudson did not file an affidavit in support of his motion, *see* DCR 13(6) (stating "[f]actual contentions involved in any . . . post-trial motion shall be initially presented and heard upon affidavits" and that "the court may set the matter for a hearing at a time in the future and allow oral examination of the affiants to resolve factual issues shown by the affidavits to be in dispute"), and he does not contend on

appeal that the district court erred by denying his belated request for an evidentiary hearing, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed forfeited). Rather, Hudson's claim appeared to be premised on the fact that documentation regarding his prior murder conviction, including the 1976 presentence investigation report (PSI), did not reference this uncharged crime. However, the omission of any reference to the uncharged crimes in these documents does not, in itself, demonstrate that those crimes did not occur or did not occur in the manner stated by the sentencing court.¹

The record also does not indicate the sentencing court relied on the assumption that Hudson deliberately shot the victim of his prior murder conviction. The sentencing court acknowledged Hudson's claim that the shooting was an accident, and although the court expressed skepticism regarding this claim, it stated that, "in any event, as a result of you guys being there to rob people in their homes, with shotguns, [the victim's] dead." In light of the foregoing, Hudson failed to demonstrate the sentencing court

¹We note that Hudson did not challenge the sentencing court's consideration of the uncharged crimes in his direct appeal, *see Hudson v. State*, No. 80784-COA, 2021 WL 632758 (Nev. Ct. App. Feb. 17, 2021) (Order of Affirmance), nor did he allege counsel was ineffective for failing to object to the sentencing court's consideration of the uncharged crimes in his prior postconviction habeas petition, *see Hudson v. State*, No. 84810-COA, 2023 WL 2004343 (Nev. Ct. App. Feb. 14, 2023) (Order of Affirmance).

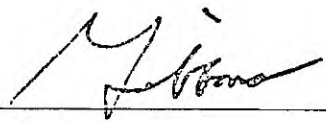
Moreover, the 1976 PSI states Hudson admitted to being responsible for a December 19, 1975, "abortive robbery attempt" in which Hudson shot a person, resulting in the person having an arm amputated. Thus, to the extent Hudson challenged the sentencing court's reliance on this information, he failed to demonstrate that this information constituted a mistaken assumption about his criminal record.


relied on mistaken assumptions about his criminal record that worked to his extreme detriment.

Finally, we conclude that all of Hudson's claims fall outside the narrow scope of claims permissible in a motion to correct an illegal sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324 (stating a motion to correct an illegal sentence "cannot . . . be used as a vehicle for challenging the validity of a . . . sentence based on alleged errors occurring at trial or sentencing" and that such claims "must be raised in habeas proceedings"). Therefore, we conclude the district court did not err by denying Hudson's motion to modify or correct an illegal sentence. Accordingly,² we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

²On appeal, Hudson claims that the sentencing court was biased against him and that it erroneously attributed the crimes committed on December 19, 1975, and December 31, 1975, to him when the crimes "involved various assailants." Hudson did not raise these claims in his motion below; thus, 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).

Hudson does not present any argument regarding the denial of his motion to obtain and unseal records. Thus, we conclude Hudson fails to demonstrate the district court erred by denying said motion.

cc: Hon. Tara D. Clark Newberry, District Judge
Attorney General/Carson City
Clark County District Attorney
Federal Public Defender/Las Vegas
Eighth District Court Clerk