

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83021-COA

**FILED**

**MAR 24 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Raul Garcia appeals from an order of the district court denying a motion to modify or correct an illegal sentence. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

First, Garcia argues the district court erred by construing his December 30, 2019, motion as a postconviction petition for a writ of habeas corpus. In his motion, Garcia specifically stated that his motion was different than a postconviction petition, asserted his sentence was illegal and should be corrected pursuant to NRS 176.555, and asserted the district court has the authority to correct a sentence that was based upon a mistake that worked to his extreme detriment. A motion to modify or correct an illegal sentence is a permissible motion, *see* NRS 176.555; *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996), and in light of Garcia's assertion that he did not file a postconviction petition for a writ of habeas corpus, we conclude that the district court erred by construing Garcia's motion as such. Nevertheless, for the reasons discussed below, we conclude that Garcia was not entitled to relief, and we therefore affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his motion, Garcia claimed that his sentences stemming from his convictions for lewdness with a minor under the age of 14 were improper because the acts that supported those convictions were incidental to the act that supported his conviction for sexual assault of a child under the age of 14. Garcia's claim fell outside the narrow 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. Therefore, without considering the merits of Garcia's claim, we conclude he was not entitled to relief.

Second, Garcia claims that the district court erred by denying his motion without first conducting an evidentiary hearing. To warrant an evidentiary hearing, Garcia was required to raise claims supported by specific allegations that were not belied by the record and, if true, would have entitled him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Because Garcia did not raise claims that would have entitled him to relief if true, the district court did not err by denying the motion without first conducting an evidentiary hearing. Therefore, we conclude Garcia is not entitled to relief based upon this argument. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Lynne K. Simons, District Judge  
Law Offices of Lyn E. Beggs, PLLC  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk