

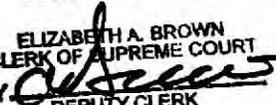
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82369-COA

FILED

AUG 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ferrill Joseph Volpicelli appeals from a district court order denying a motion to modify sentence filed on August 14, 2020.¹ Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

In his motion, Volpicelli claimed the sentencing court relied on an improper judgment of conviction in its decision to adjudicate him a habitual criminal. “[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). The Nevada Supreme Court previously held that any error in relying on the allegedly improper judgment did not work to Volpicelli’s extreme detriment. *Volpicelli v. State*, Docket No. 51622 (Order of Affirmance, December 3, 2009). This holding represents the law of the case and “cannot be avoided by a more detailed and precisely focused argument.” *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Nor did Volpicelli demonstrate an exception to the

¹Volpicelli’s motion was captioned “motion for relief with habitual criminal adjudication.” The district court construed Volpicelli’s motion as a motion to modify sentence.

application of the law of the case to this matter. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007). Therefore, we conclude the district court did not err by denying this claim.

Volpicelli also claimed that recent amendments to the habitual criminal statute should be applied to him retroactively, and that the district court should modify his sentence based on evolving standards of decency as well as his extenuating circumstances. These claims were outside the scope of a motion to modify sentence. *See Edwards*, 112 Nev. at 708, 918 P.2d at 324. Therefore, we conclude the district court did not err by denying this claim. For the foregoing reasons, we conclude the district court did not err by denying Volpicelli's motion, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Second Judicial District Court
Second Judicial District Court, Dept. 10
Ferrill Joseph Volpicelli
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk