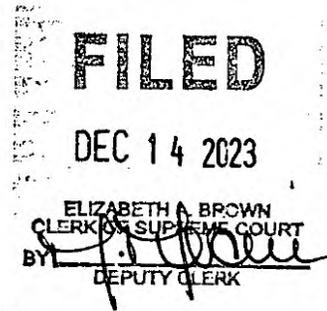


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBURT HICKMAN, JR., A/K/A
WILLIAM HICKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86554-COA



ORDER OF AFFIRMANCE

Wilburt Hickman, Jr., appeals from an order of the district court denying a motion to modify or correct an illegal sentence filed on December 1, 2021. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Hickman first argues the district court erred by denying his motion without conducting an evidentiary hearing. “[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.* To warrant an evidentiary hearing, a defendant must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the defendant to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Hickman claimed that his sentence under the habitual criminal statute should be stricken because the Legislature passed A.B.

236, which increased the number of prior felonies necessary to qualify for habitual criminal treatment. Hickman failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment, and he failed to demonstrate that his sentence was facially illegal or the district court lacked jurisdiction. The amendments to the habitual criminal statute do not apply retroactively because the Legislature gave no indication that it intended the changes would be applied retroactively to persons in Hickman's situation. *See* 2019 Nev. Stat., ch. 633 § 86, at 4441-42; *see also State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Therefore, we conclude the district court did not err by denying Hickman's claim without first conducting an evidentiary hearing.¹

Second, Hickman appeared to claim that his sentence should be reduced because he has served 10 years already, has applied himself to self-help courses, and has a minimal disciplinary record. This claim fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. Therefore, without considering the merits of this claim, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

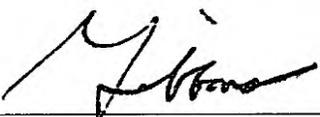
Hickman next argues on appeal that if his claim was outside the scope of a motion to modify or correct an illegal sentence, the district court should have construed his motion to be a postconviction petition for a

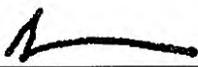
¹On appeal, Hickman argues for the first time that A.B. 236 should be retroactive because it is a new substantive law and several of his prior convictions would no longer qualify him for habitual criminal treatment because of changes in federal and California law. These claims were not raised below, and we decline to consider them for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

writ of habeas corpus. Hickman fails to demonstrate the district court was required to do so. Therefore, we conclude Hickman is not entitled to relief on this claim.

Finally, Hickman argues the district court erred by failing to appoint him counsel. Hickman did not request the appointment of counsel below, and he fails to demonstrate he would have been entitled to the appointment of counsel. Therefore, we conclude Hickman is not entitled to relief on this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Wilburt Hickman, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk