

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LESTER LEE TELLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70116

FILED

OCT 19 2016

ELIZABETH ABROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus appellant Lester Tellis filed on November 20, 2015.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Tellis claims the district court erred in concluding his petition was procedurally barred because his claims of constitutionally invalid sentences and facially illegal sentences are not subject to procedural bars and statutory laches. In his habeas petition, Tellis claimed his sentence constituted cruel and unusual punishment, violated the Double Jeopardy Clause, and contained illegal enhancements for the use of a weapon.

While it is true motions to modify or to correct illegal sentences are exempted from the provisions governing habeas petitions, *see* NRS 34.724(2)(a); NRS 176.555; *Edwards v. State*, 112 Nev. 704, 706-05, 918 P.2d 321, 323-24 (1996), "a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's

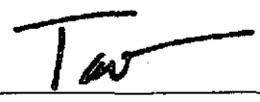
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

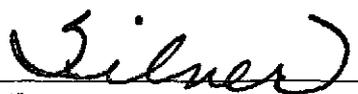
criminal record which work to the defendant's extreme detriment" and a motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum, *Edwards*, 112 Nev. at 708, 918 P.2d at 324.

We conclude the claims raised in Tellis' habeas petition fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence, the district court properly determined Tellis' petition was procedurally barred and Tellis failed to demonstrate good cause and actual prejudice to overcome the procedural bars, and Tellis' claims have defaulted and may not be considered on appeal. See NRS 34.726(1); NRS 34.800(1); NRS 34.810(2); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Lester Lee Tellis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk