

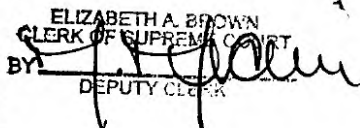
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY LEE GORMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87317-COA

FILED

APR 25 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rickey Lee Gorman appeals from an order of the district court denying his postconviction petition for a writ of habeas corpus challenging the computation of time served.¹ Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

In his petition below, which was filed on May 25, 2023, Gorman sought the application of credits to his minimum sentence pursuant to Assembly Bill 271 (A.B. 271). Gorman neither alleged nor demonstrated that he had exhausted his administrative remedies prior to filing the petition. Accordingly, we conclude the district court did not err by denying his petition.² See NRS 34.724(1), (2)(c).

¹Gorman's pleading was titled, "application of assembly bill (271)." The district court properly construed it as a postconviction petition for a writ of habeas corpus challenging the computation of time served. See NRS 34.724(2)(c) (providing a postconviction petition for a writ of habeas corpus is the sole remedy available to challenge the computation of time served).

²The district court should have declined to reach the merits of Gorman's petition because he did not demonstrate that he had first exhausted his administrative remedies. Instead, while the district court accurately stated that A.B. 271 was never passed into law and, thus, did not

On appeal, Gorman claims the district court erred by denying his petition because the State's response was untimely under EDCR 2.20(E), which requires an opposition be filed within 14 days. However, NRS 34.745(2) controls the timeliness of any response, and Gorman has not demonstrated that the State's response was untimely under that statute. We therefore conclude he is not entitled to relief on this claim.

Gorman also claims on appeal that the district court erred both by conducting an evidentiary hearing outside his presence and by denying his claims without first conducting an evidentiary hearing. The record before this court demonstrates that the district court did not conduct any hearing on Gorman's petition. Rather, it issued a minute order from chambers. Further, because Gorman failed to allege that he had exhausted his administrative remedies, we conclude the district court did not err by denying the petition without first conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we conclude Gorman is not entitled to relief on these claims.

Gorman also claims the district court erred by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760,

provide a basis for relief, the district court improperly reached the merits of Gorman's petition. We nevertheless affirm for the reason stated above. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

761 (2017). Gorman appears to meet the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that no relief could be granted and, thus, denied the motion to appoint counsel. Because Gorman's sole claim before the district court was based on a bill that never became law, we cannot conclude the district court abused its discretion by denying the motion for the appointment of counsel.

Finally, Gorman appears to claim that he has suffered a double jeopardy violation, coram nobis relief is appropriate, he is actually innocent, and he filed his petition below pursuant to NRS 34.590 and 34.500. These are new arguments not properly raised below,³ and we decline to consider them on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Gorman raised these claims in various documents that were filed after the State had filed its response. However, Gorman neither sought nor was granted permission to file the documents, and they were therefore not properly before the district court. See NRS 34.750(5) (“No further pleadings may be filed except as ordered by the court.”).

cc: Hon. Erika D. Ballou, District Judge
Rickey Lee Gorman
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Eighth District Court Clerk