

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS K. MILLAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46911

FILED

JUL 10 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. R. R.*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On July 20, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of thirty-six to one hundred and twenty months in the Nevada State Prison. An amended judgment of conviction was entered on November 29, 2005, to provide appellant with seventy-three days of credit for time served. No direct appeal was taken.

On December 13, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 9, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he was arbitrarily assigned to medium custody when he should have been assigned to minimum custody. Appellant claimed that his classification was in violation of due process and equal protection.

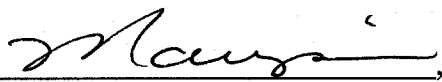
The district court determined that appellant's challenge lacked merit as the classification decision was discretionary, and appellant failed to demonstrate a violation of his constitutional rights. We conclude that the district court erroneously reviewed the merits of appellant's challenge to his custody classification. This court has "repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof."¹ Appellant's challenge to his custody classification is a challenge to the condition of his confinement. Thus, appellant's challenge was not cognizable. Nevertheless, we affirm the denial of appellant's petition as the district court reached the correct result.²

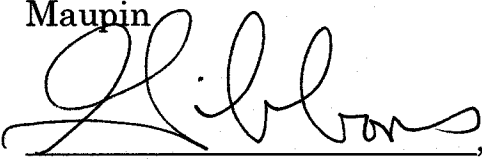
¹Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which imposes an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life).

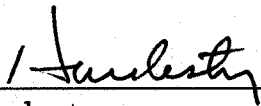
²See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Douglas K. Millar
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).