

IN THE SUPREME COURT OF THE STATE OF NEVADA


JOHN STINCHFIELD,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 49855

FILED

JAN 10 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On August 18, 1995, the Second Judicial District Court convicted appellant, pursuant to a guilty plea, of escape. Appellant was sentenced to time served. Appellant, in custody at the Ely State Prison for counts of murder and attempted murder, filed a proper person post-conviction petition for a writ of habeas corpus in the Seventh Judicial District Court on March 13, 2007. On May 8, 2007, the Seventh Judicial District Court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he was being unlawfully denied his liberty interest in a prison industry job assignment based on his escape conviction. Because this claim only challenged the conditions of confinement, it was not cognizable in a petition for a writ of

habeas corpus.¹ Accordingly we affirm the order of the district court denying appellant's petition on this ground.

In his petition, appellant also contended that the judgment of conviction for the count of escape was unlawful because it did not contain a reference to the statute under which the Second Judicial District Court sentenced appellant. Because this claim challenged the validity of his judgment of conviction or sentence, the petition was required to be filed in the district court in the county in which he was convicted—the Second Judicial District Court.² Appellant filed his petition in the district court for the county in which he is incarcerated—the Seventh Judicial District Court. Thus, appellant filed his petition in the wrong district court, and for this reason, we conclude that the district court properly denied the petition.

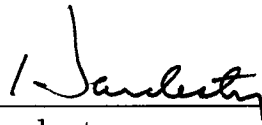
However, we note that NRS 34.738(2)(b) requires the district court to transfer a petition that is filed in the wrong district court to the appropriate district court. Therefore, we direct the clerk of the Seventh Judicial District Court to transfer appellant's petition to the clerk of the

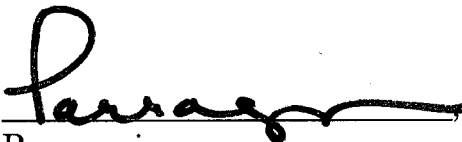
¹See Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) (“We have repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof.”); see also Sandin v. Conner, 515 U.S. 472 (1995).

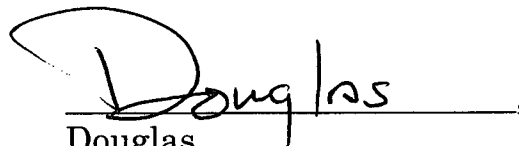
²See NRS 34.738(1).

Second Judicial District Court if the clerk has not already done so.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Dan L. Papez, District Judge
John Marston Stinchfield Jr.
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk