

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EDWARD BUTLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57839

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying an “omnibus petition for post-conviction relief.”¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

In his petition filed on November 16, 2010, appellant challenged a conviction, which he had discharged prior to filing his petition, on the grounds that the offense in district court case number C157409 should have been dismissed pursuant to a plea bargain in district court case number C146246. The district court treated the petition as a post-conviction petition for a writ of habeas corpus and determined that the petition was procedurally barred. Although the district court incorrectly construed the petition to be a post-conviction petition for a writ of habeas corpus as appellant could not satisfy the custody requirement of a habeas corpus petition, see Nev. Const. art. 6, § 6(1); Jackson v. State,

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

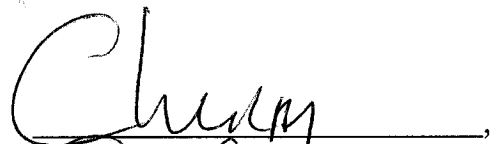
115 Nev. 21, 23, 973 P.2d 241, 242 (1999), the district court reached the correct result in denying the petition.² See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

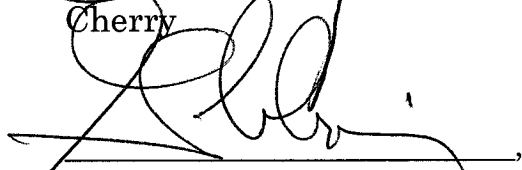
This court has not recognized the availability of a petition for a writ of coram nobis to challenge a conviction that the petitioner has previously discharged. Bigness v. State, 71 Nev. 309, 311, 289 P.2d 1051, 1052 (1955) (determining that a petition for a writ of coram nobis was not the appropriate procedure to challenge a conviction that the petitioner had expired sixteen years prior to the filing of the petition). Even assuming that a petition for a writ of coram nobis were an available procedure, Warden v. Peters, 83 Nev. 298, 301, 429 P.2d 549, 551 (1967) (recognizing that at common law a writ of coram nobis was available, “where all other remedies fail,” to correct a mistake of fact), appellant’s petition was properly denied as he did not provide a valid reason for his failure to raise his claims earlier. See id. (recognizing that the writ was available to correct a mistake of fact discovered after judgment); see also U.S. v. Kwan,

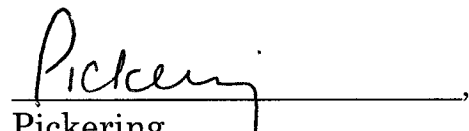
²Appellant labeled his petition an “omnibus petition for post-conviction relief,” and he sought to challenge convictions in district court case number C157409 and C155791 by various means, including a petition for a writ of coram nobis, a post-conviction petition for a writ of habeas corpus, and a request to seal criminal records. An “omnibus” petition does not exist in Nevada. As this appeal involves only the proceedings in district court case number C157409, a petition for a writ of habeas corpus was not available in this case for the reason discussed above. A request to seal criminal records was improperly sought in the “omnibus” petition and should be filed in compliance with the requirements of NRS 179.245. We express no opinion on the merits of any motion filed pursuant to NRS 179.245.

407 F.3d 1005, 1011 (9th. Cir. 2005) (recognizing that a federal petitioner, challenging a federal conviction, applying for a petition for a writ of coram nobis must demonstrate: “(1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character” (quoting Estate of McKinney v. U.S., 71 F.3d 779, 781-82 (9th Cir. 1989) (quotation marks and citations omitted))).³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Doug Smith, District Judge
John Edward Butler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³A petition for a writ of error coram nobis is authorized in the federal courts pursuant to 28 U.S.C. § 1651(a). See United States v. Morgan, 346 U.S. 502 (1954).