IN THE SUPREME COURT OF THE STATE OF NEVADA

LONNIE JAY LOUCKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58729

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a petition for a writ of coram nobis, or alternatively, a petition for a writ of mandamus.[1] Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition filed on June 6, 2011, appellant claimed that his 2008 conviction for two counts of open or gross lewdness (Category D felony) should have been treated as a gross misdemeanor pursuant to NRS 201.210(1) because he did not have a prior open or gross lewdness conviction as he was allowed to withdraw his plea in the prior case and enter a plea to disorderly conduct. Although appellant acknowledged that he did not withdraw his plea to the prior open or gross lewdness conviction until 2010, two years after the conviction he challenges, he claimed that this subsequent change to the prior conviction should result in gross misdemeanor offenses in this case.

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[1]This 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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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 had expired his sentences in the instant case and therefore could not satisfy the custody requirement of a habeas corpus petition, see Nev. Const. art. 6, § 6(1); Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999), the district court reached the correct result in denying the petition for reasons discussed below.[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 expressly 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 as he was aware of the terms of the plea agreement in his prior open or gross lewdness conviction when he entered the guilty plea in this case and any delay in withdrawing his plea in the

[2]We conclude that the district court did not err in denying mandamus relief. NRS 34.160; NRS 34.170.

prior conviction can be attributed solely to appellant,[3] and appellant failed to demonstrate an error of the most fundamental character.[4] See id. (recognizing that the writ was available to correct a mistake of fact discovered after judgment); see also U.S. v. Kwan, 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. 1995) (quotation marks and citations omitted)).[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.

Gibbons, J.

Parraguirre, J.

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[3]In fact, we note that at the plea canvass appellant's trial counsel represented that appellant's plea, which acknowledged a prior conviction, was a legal fiction.

[4]Contrary to appellant's request, the remedy would not be to simply direct the district court to change the convictions from felonies to gross misdemeanors, but appellant would have to withdraw his guilty plea and face the entirety of the original charges.

[5]A 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).

cc: Hon. Valerie Adair, District Judge
Lonnie Jay Loucks
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk