

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE F. FERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68357

FILED

FEB 17 2016

TRISIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a motion for presentence jail time credit.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In his motion filed on April 29, 2015, Rene Fernandez sought an additional 1702 days of presentence credit for time served.

Preliminarily, we note Fernandez sought presentence credit in the wrong vehicle. A claim for additional presentence credit is a challenge to the validity of the judgment of conviction and sentence that must be raised in a postconviction petition for a writ of habeas corpus in compliance with the procedural requirements set forth in NRS chapter 34. *See Griffin v. State*, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006). Fernandez's motion was untimely filed, *see* NRS 34.726(1), as it was filed more than three years after issuance from the remittitur of his direct


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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appeal on March 6, 2012.² Moreover, his motion constituted an abuse of the writ as he raised claims new and different from those raised in his previous postconviction petition for a writ of habeas corpus.³ See NRS 34.810(2). Fernandez's motion was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Fernandez did not attempt to demonstrate cause for the delay. The district court should have construed the motion as a petition for postconviction relief and denied relief pursuant to application of the procedural bars. See *State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). However, we affirm because the district court reached the correct result in denying the motion. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court may affirm a district court decision that reaches the correct result for the wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²*Fernandez v. State*, Docket No. 58507 (Order of Affirmance, February 8, 2012).

³*Fernandez v. State*, Docket No. 62201 (Order of Affirmance, October 16, 2013).

cc: Hon. Douglas Smith, District Judge
Rene F. Fernandez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk