

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT LEROY NICHOLS,  
Appellant,  
vs.  
JO GENTRY, WARDEN,  
Respondent.

No. 72151

FILED

NOV 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Scott Leroy Nichols appeals from an order of the district court denying a petition for a writ of habeas corpus.<sup>1</sup> Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Nichols argues the district court erred in denying his August 23, 2016, petition. In his petition, Nichols claimed he did not challenge his judgment of conviction, but rather challenged the lawfulness of his restraint and incarceration. Nichols asserted his incarceration was improper because the commission that made recommendations regarding the creation of the Nevada Revised Statutes during the 1950s was not lawful.


The record demonstrates Nichols is incarcerated pursuant to his conviction for two counts of trafficking in a controlled substance. Such a conviction was authorized by NRS 453.3385 as it existed when Nichols committed his crimes in 1998. See 1997 Nev. Stat., ch. 256, § 5, at 905. Nichols did not demonstrate his challenge to a statute revision commission had any bearing upon his conviction or his resulting incarceration.

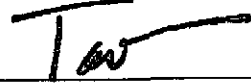
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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

Accordingly, Nichols failed to demonstrate he is unlawfully restrained or incarcerated. As Nichols failed to demonstrate that he is unlawfully committed, detained, confined, or restrained, we conclude the district court did not err by denying Nichols' petition. See NRS 34.360; NRS 34.770(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Nancy L. Porter, District Judge  
Scott Leroy Nichols  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>2</sup>We note the district court relied upon the Nevada Rules of Civil Procedure when it denied the petition. However, the district court has the authority to dismiss the petition without a hearing pursuant to NRS 34.770(2) and the district court should have relied upon the provisions of NRS Chapter 34 when considering this petition. See NRS 34.780(1). Nevertheless, as we conclude the district court properly denied the petition for the reasons explained previously, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).