

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN D. ORR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74185

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven D. Orr appeals from an order of the district court denying a petition for a writ of coram nobis filed on July 25, 2017, and an amended petition filed on August 25, 2017.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Orr contends the district court erred by denying his claim that he is entitled to withdraw his guilty plea because factual errors outside the record affected its validity. A writ of coram nobis may be used to challenge the conviction of one who is not in custody.² *Trujillo v. State*, 129 Nev. 706, 716, 310 P.3d 594, 601 (2013). Relief under the writ “is limited to errors involving facts that were not known to the court, were not withheld by the defendant, and would have prevented entry of the judgment.” *Id.* at 717, 310 P.3d at 601.

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


²The district court found—and Orr does not dispute—that he expired the last of his sentences in this case on November 9, 2016.

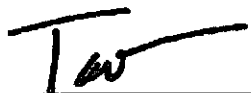
Orr first claimed the Nevada Department of Corrections (NDOC) had failed to properly apply his statutory credits to his minimum sentences as required by NRS 209.4465(7)(b) (1999). He claimed this was a factual error not known by the court. Orr's claim was outside the scope of *coram nobis*. The application of credits to a minimum sentence affects only parole eligibility, and any mistake regarding such would not have prevented entry of the judgment. *See Little v. Warden*, 117 Nev. 845, 849 n.9, 34 P.3d 540, 543 n.9 (2001) (noting parole eligibility is not a direct consequence of a guilty plea and courts have no duty to advise a defendant regarding such eligibility). Further, the meaning of NRS 209.4465(7)(b) was a purely legal question, *see Williams v. Nevada Dep't of Corr.*, 133 Nev. ___, ___, 402 P.3d 1260, 1262 (2017), and thus NDOC's mistaken understanding of it was outside the writ's scope. *See Trujillo*, 129 Nev. at 717, 310 P.3d at 601 (“[L]egal errors fall entirely outside the scope of the writ.”).

Orr also claimed the State breached the guilty plea agreement in that it had orally promised him he would be eligible for early release on parole if he pleaded guilty. Orr's claim fails for several reasons. First, Orr was aware of the alleged promise at the time of his plea and has failed to demonstrate he did not withhold its existence. Second, the alleged promise would not necessarily have precluded judgment because, had Orr not withheld its existence, it could have been clarified. Finally, Orr admitted he was aware of the issue while he was in NDOC's custody but failed to pursue it in court. *See id.* (“[A]ny error that was reasonably available to be raised while the petitioner was in custody is waived.”); *Cf. Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988)

(indicating lack of legal knowledge does not excuse a failure to pursue remedies). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Linda Marie Bell, District Judge
Steven D. Orr
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk