IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEE SHELTON,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 75902-COA

FILED

FEB 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Lee Shelton appeals from an order of the district court denying a petition for a writ of habeas corpus filed on January 11, 2018.[1] Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Shelton claimed the district court lacked jurisdiction to sentence him to both attempted sexual assault and willfully endangering a child because the crimes were factually the same and convictions for both violate the Double Jeopardy Clause pursuant to *Brown v. State*, 113 Nev. 275, 934 P.2d 235 (1997).

A person "may prosecute a writ of habeas corpus to inquire into the cause of [his] imprisonment or restraint." NRS 34.360. The cause of Shelton's imprisonment, as reflected in the record before this court, is a February 26, 2008, judgment of conviction for attempted sexual assault on a child under the age of 16 and willfully endangering a child, as the result

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

child sexual abuse or sexual exploitation. Because Shelton is restrained pursuant to a valid judgment of conviction, he is not entitled to relief under the habeas corpus provisions of NRS 34.360 through NRS 34.680.

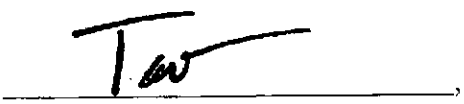
Shelton argues on appeal the district court erred by construing his petition as a postconviction petition. Assuming, without deciding, that the district court erred by construing Shelton's pleading as a postconviction petition, we nevertheless affirm the denial of the petition for the reasons stated above. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

To the extent Shelton claims his petition should be considered because he is raising a subject matter jurisdiction claim and this claim can be raised at any time, we conclude Shelton failed to demonstrate his claim implicated the jurisdiction of the district court. *See* Nev. Const. art. 6, § 6; NRS 171.010. Further, he failed to demonstrate that being convicted of both crimes violated the Double Jeopardy Clause. To violate the Double Jeopardy Clause, the willfully endangering a child charge would have to be based on the attempted sexual assault charge. *See Brown*, 113 Nev. at 286-87, 934 P.2d at 242-43. Here, the willfully endangering a child charge was based on "French kissing her and/or fondling her breasts and/or vaginal area and/or by allowing other grown men to have sexual relations with her." The attempted sexual assault charge was based on attempting to subject a "female child under the age of sixteen years, to sexual penetration." The willfully endangering a child charge was based on facts not encompassed by the attempted sexual assault charge, and therefore, did not violate the

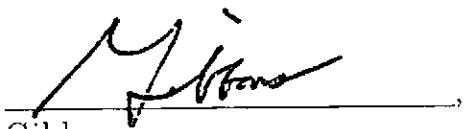
Double Jeopardy Clause. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.[2]

_____, A.C.J.
Douglas



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Kathleen M. Drakulich, District Judge
David Lee Shelton
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[2]We have reviewed all documents Shelton has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Shelton has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.