

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY CLARKE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76212-COA

**FILED**

FEB 15 2019

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Anthony Clarke appeals from an order of the district court denying his petition for a writ of habeas corpus filed on March 14, 2018, as well as supplemental pleadings filed on March 28, 2018, April 2, 2018, and April 25, 2018.<sup>1</sup> Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Clarke contends the district court erred by construing his pleadings as postconviction habeas petitions when he filed them pursuant to NRS 34.360. Clarke's pleadings below challenged the jurisdiction of the district court on numerous bases. The district court's order does not clearly construe Clarke's pleadings as a first, timely postconviction petition for a writ of habeas corpus. Rather, the district court concluded Clarke failed to allege any grounds that, if true, would entitle him to relief. We agree that Clarke failed to demonstrate any basis for granting relief under NRS 34.360. *See* Nev. Const. art. 6, § 6; NRS 171.010; *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) ("Subject matter jurisdiction is the

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

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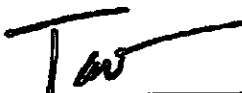
court's authority to render a judgment in a particular category of case." (internal quotation marks omitted)). Clarke is being restrained pursuant to a judgment of conviction filed on January 24, 2018. To the extent Clarke challenges the validity of his guilty plea or the resulting judgment of conviction, such claims must be raised in a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

Clarke also contends the district court failed to address his claims that the Nevada Department of Corrections was improperly calculating his time served. Clarke did not raise this argument in his petition below, and we decline to consider it on appeal in the first instance. *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. Jerome M. Polaha, District Judge  
Anthony Clarke  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk