

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN RAY HOLMES,
Appellant,
vs.
WARDEN; WSCC; BOARD OF PAROLE
COMMISSIONERS; NEVADA STATE
ATTORNEY GENERAL; AND THE
STATE OF NEVADA,
Respondents.

No. 76088-COA

FILED

APR 29 2019

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

ORDER OF AFFIRMANCE

Kevin Ray Holmes appeals from an order of the district court denying a petition for a writ of habeas corpus.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

Holmes argues the district court erred by denying his February 2, 2018, petition as procedurally barred pursuant to NRS 34.810. Holmes asserts he filed a petition pursuant to NRS 34.360 to raise a challenge to the authority of the Nevada Board of Parole Commissioners (Board) and Nevada Department of Corrections (NDOC) to keep him in custody, and the procedural bars are not applicable to such petitions.

Our review of the record reveals the district court should not have denied the petition as procedurally barred because NRS 34.810 does not apply to petitions for a writ of habeas corpus filed pursuant to NRS 34.360. *See* NRS 34.720 (stating NRS 34.720 through NRS 34.830 only apply to postconviction petitions for a writ of habeas corpus challenging either a judgment of conviction or sentence in a criminal case, or the

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


computation of time served pursuant to a judgment of conviction). However, Holmes was not entitled to relief and, therefore, the district court properly denied relief.

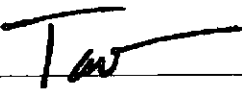
In his petition Holmes contended that in 2005, the Board conducted his parole hearing several months late. Holmes asserted as a result of the delayed parole hearing, his sentence became void and the Board and NDOC lacked the authority to maintain custody over him. Holmes' claim lacked merit.

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 Holmes' imprisonment, as reflected in the record before this court, is his 1999 conviction and sentence for first-degree murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon. Holmes did not demonstrate NDOC lacked the authority to detain him while he serves his sentence or that his sentence was void. Rather, the record demonstrates NDOC properly has custody of Holmes, *see* NRS 209.341(2) (stating the Director of NDOC shall "[a]ssign every person who is sentenced to imprisonment in the state prison to an appropriate institution or facility of the Department"), and Holmes was not entitled to relief.

Accordingly, the district court should have denied Holmes' petition because he is lawfully imprisoned. Nevertheless, because the record demonstrated Holmes was not entitled to relief, we affirm the district court's decision to deny the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Having concluded Holmes is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Kevin Ray Holmes
Attorney General/Carson City
Carson City Clerk

²We conclude the district court did not abuse its discretion by declining to appoint counsel.