

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

No. 78868-COA

FILED

JAN 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joel Burkett appeals from an order of the district court denying a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.


Burkett filed a petition for a writ of habeas corpus in the district court on February 1, 2019. In his petition and later-filed supplements, Burkett specifically stated he did not file a postconviction petition for a writ of habeas corpus. Rather, Burkett's petition was filed pursuant to the provisions contained within NRS 34.360 through NRS 34.680. However, the district court construed the petition to be a postconviction petition for a writ of habeas corpus and concluded it was procedurally barred pursuant to NRS 34.810(2). As Burkett did not file a postconviction petition for a writ of habeas corpus, the district court should not have applied NRS 34.810(2) to his petition. However, for the reasons discussed below, we affirm the decision of the district court because it reached the correct result, but for the wrong reason. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his petition, Burkett claimed he was entitled to a new trial because his trial counsel improperly conceded his guilt during closing

arguments. 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 Burkett’s imprisonment, as reflected in the record before this court, is his July 29, 1981, conviction and sentence for robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, and two counts of sexual assault. Burkett’s challenge to the validity of the judgment of conviction was not properly raised in a petition for a writ of habeas corpus filed pursuant to NRS 34.360 through NRS 34.680, but rather must be raised in a postconviction petition for a writ of habeas corpus.¹ See NRS 34.724(2)(b) (stating that a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction). Therefore, we affirm the district court’s decision to deny the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We express no opinion as to whether Burkett could meet the procedural requirements of NRS chapter 34.

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk