

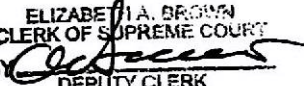
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ANTHONY BRANDON,
Appellant,
vs.
WARDEN JERRY HOWELL;
OFFENDER MANAGEMENT
DIVISION; THE STATE OF NEVADA;
AND DWAYNE DEAL,
Respondents.

No. 81518-COA

FILED

JAN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Anthony Brandon appeals from an order of the district court dismissing a January 30, 2020, postconviction petition for a writ of habeas corpus challenging the computation of time served. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

First, Brandon argues the district court erred by applying the recent amendments to NRS 34.724(2)(c) to dismiss his petition, because they were not yet in effect when he filed the petition. Amendments to NRS 34.724(2)(c) requiring petitioners to exhaust “all available administrative remedies” prior to pursuing postconviction relief became effective January 1, 2020. *See* 2019 Nev. Stat., ch. 500, § 7, at 3011. Because Brandon filed his petition after the effective date of the amendments, the district court properly concluded Brandon had to exhaust administrative remedies before pursuing postconviction relief. Further, the record supports the district court’s conclusion that Brandon did not attempt to exhaust administrative remedies prior to filing his petition. Therefore, we conclude the district court did not err by dismissing the petition. *See* NRS 34.810(4).

Second, Brandon argues the statutory provisions requiring him to exhaust administrative remedies prior to seeking postconviction relief violate the Ex Post Facto Clause and constitute a bill of attainder. The Ex

Post Facto Clause does not “limit the legislative control of remedies and modes of procedure which do not affect matters of substance,” and “a procedural change is not ex post facto.” *Dobbert v. Fla.*, 432 U.S. 282, 293 (1977). Brandon does not demonstrate that the Legislature’s decision to require him to pursue administrative remedies before he initiates postconviction proceedings affected matters of substance. Further, Brandon does not allege the provisions punish named persons or easily ascertainable members of a group without judicial process and, thus, fails to demonstrate they constitute a bill of attainder. *See Spilotro v. State*, 99 Nev. 187, 192, 661 P.2d 467, 470 (1983) (defining a bill of attainder). Therefore, Brandon fails to demonstrate he is entitled to relief.

Third, Brandon appears to argue that requiring him to exhaust administrative remedies prior to pursuing postconviction relief amounts to an improper suspension of the writ of habeas corpus. However, legislative regulation of the processes regarding pursuit of postconviction relief does not amount to the improper suspension of the writ of habeas corpus in violation of the federal or state constitutions. *See Jordon v. Dir., Nev. Dep’t of Prisons*, 101 Nev. 146, 148, 696 P.2d 998, 999 (1985), *superseded on other grounds by statute*. Because the Legislature may properly regulate the postconviction relief process, Brandon does not demonstrate that requiring him to exhaust administrative remedies prior to filing a postconviction petition improperly suspended the writ of habeas corpus. Therefore, Brandon fails to demonstrate he is entitled to relief.

Fourth, Brandon appears to argue that the district court erred by adopting the State’s proposed order dismissing his petition. Brandon does not identify any legal reason why the district court should not have adopted and signed the proposed draft order. Moreover, Brandon does not demonstrate the adoption of the proposed order adversely affected the

outcome of the proceedings or his ability to seek full appellate review.
Therefore, we conclude Brandon is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Michael Anthony Brandon
Attorney General/Carson City
Eighth District Court Clerk