

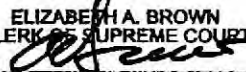
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMMANUEL JOSIAH CABALLERO,
Appellant,
vs.
ISIDRO BACA, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 82507-COA

FILED

JUN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Emmanuel Josiah Caballero appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on March 6, 2020. First Judicial District Court, Carson City; James Todd Russell, Judge.

Caballero argues the district court erred by dismissing his petition for failure to exhaust administrative remedies. Caballero's petition challenged the computation of time served, and he was required to "exhaust[] all available administrative remedies" before filing his petition. *See* NRS 34.724(1). The district court found Caballero failed to exhaust all available administrative remedies before he filed his petition. This finding is supported by substantial evidence in the record. We therefore conclude the district court did not err by dismissing Caballero's petition.

Caballero also argues the district court failed to give him sufficient time to respond to the State's motion to dismiss. A petitioner has 15 days to respond to a motion to dismiss filed by the State. NRS 34.750(4). The State filed and served its motion to dismiss on April 16, 2020. The district court did not grant the motion until January 2021, well past the 15

days Caballero had to respond. We therefore conclude Caballero is not entitled to relief on this claim.

Finally, to the extent Caballero attempts to raise new argument not presented below, we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Having concluded Caballero is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Emmanuel Josiah Caballero
Attorney General/Carson City
Carson City Clerk