

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS HARRY WARENBACK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82769-COA

FILED

SEP 28 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Douglas Harry Warenback appeals from an order of the district court denying a petition for a writ of coram nobis. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Warenback argues the district court erred by denying his January 26, 2021, petition. In his petition, Warenback claimed that his case would have been dismissed at the preliminary hearing had he presented information concerning the victim's curfew violation and subsequent juvenile court proceedings. Warenback contended the information demonstrating that the victim violated curfew may have shown that she was not kidnapped but rather ran away from her home.

The Nevada Supreme Court has explained that in Nevada state courts, "the writ of coram nobis may be used to address errors of fact outside the record that affect the validity and regularity of the decision itself and would have precluded the judgment from being rendered." *Trujillo v. State*, 129 Nev. 706, 717, 310 P.3d 594, 601 (2013). The scope of a petition for a writ of coram nobis is "limited to errors involving facts that were not known to the court, were not withheld by the defendant, and would have prevented entry of the judgment." *Id.* However, "a factual error does not include

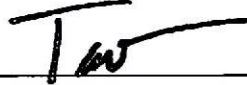
21-27891

claims of newly discovered evidence because these types of claims would not have precluded the judgment from being entered in the first place.” *Id.* In addition, “any error that was reasonably available to be raised while the petitioner was in custody is waived, and it is the petitioner’s burden on the face of his petition to demonstrate that he could not have reasonably raised his claims during the time he was in custody.” *Id.* at 717-18, 310 P.3d at 601-02.

Warenback’s claim did not involve errors of fact that would have prevented entry of the judgment of conviction, and it therefore was not within the scope of a petition for a writ of coram nobis. Moreover, Warenback raised claims concerning the victim’s juvenile court proceedings in his March 21, 2017, postconviction petition for a writ of habeas corpus. Warenback also asserted he was in custody until October 3, 2018. Thus, Warenback’s claim concerning the victim’s curfew violation and subsequent juvenile court proceedings was reasonably available to be raised while he was in custody. Because Warenback could have raised his claim while he was in custody, even were the claim within the scope of a petition for a writ of coram nobis, it is waived. Accordingly, the district court did not err by denying Warenback’s petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Monica Trujillo, District Judge  
Douglas Harry Warenback  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk