

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NARCUS SAMONE WESLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82690-COA

**FILED**

**MAR 04 2022**

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

*ORDER OF AFFIRMANCE*

Narcus Samone Wesley appeals from an order of the district court denying a “petition for writ of habeas corpus challenging the erroneous jury instruction pursuant to NRS 193.165 and NRS 34.360” filed on November 12, 2020. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In his petition, Wesley challenged the jury instructions given at trial and the imposition of the deadly weapon enhancement. 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 Wesley’s imprisonment, as reflected in the record before this court, is an October 8, 2008, amended judgment of conviction of conspiracy to commit burglary, conspiracy to commit robbery, first-degree kidnapping, coercion with the use of a deadly weapon, open or gross lewdness with the use of a deadly

weapon, two counts each of burglary while in possession of a firearm and assault with the use of a deadly weapon, four counts of robbery with the use of a deadly weapon, and five counts of sexual assault with the use of a deadly weapon. Wesley's claims were not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360. Therefore, we conclude the district court did not err by denying Wesley's petition.<sup>1</sup>

On appeal, Wesley first claims the district court abused its discretion when it resolved Wesley's petition at a hearing that was outside his presence. Because no argument or evidence was taken at the hearing on the petition, we conclude the district court did not err by denying the petition at the hearing without having Wesley present. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented).

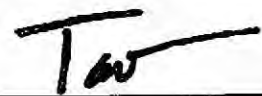
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<sup>1</sup>The district court construed Wesley's petition to be a postconviction petition for a writ of habeas corpus filed pursuant to NRS 34.720 through NRS 34.830. We conclude this was error because Wesley's petition specifically stated he was seeking relief pursuant to NRS 34.360, not the postconviction provisions. Nevertheless, we affirm for the reasons stated herein. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

Wesley next claims the district court erred by failing to consider his reply brief. To the extent this was error, Wesley's claims were outside the scope of a petition filed pursuant to NRS 34.360, and any error was thus harmless. Therefore, we conclude Wesley is not entitled to relief as to this claim. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Tara D. Clark Newberry, District Judge  
Justice Law Center  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk