

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84858-COA

**FILED**

FEB 27 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ferrill Joseph Volpicelli appeals from an order of the district court dismissing a petition for declaratory relief filed on January 24, 2022. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Volpicelli contends the district court abused its discretion by dismissing his petition. We review a district court's determination regarding a petition for declaratory relief for an abuse of discretion. *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d 426, 428 (1973).

In his petition, Volpicelli sought a declaration as to how the 2019 legislative amendments to NRS 207.010 affected his due process rights as a habitual criminal. The district court found, and Volpicelli concedes on appeal, that he was adjudicated a habitual criminal pursuant to NRS 207.010 and was sentenced accordingly. Thus, Volpicelli's petition challenging the effects of the legislative amendments to the habitual

criminal statute constituted a challenge to the validity of his judgment of conviction. And a challenge to the validity of a judgment of conviction has to be raised in a postconviction petition for a writ of habeas corpus.<sup>1</sup> See NRS 34.724(2)(a), (b) (providing that except for a direct appeal from the judgment of conviction or a motion that is incident to the proceedings in the district court, a postconviction habeas petition is the exclusive remedy to challenge the validity of a conviction or sentence); *Harris v. State*, 130 Nev. 435, 438-39, 329 P.3d 619, 622 (2014) (discussing the exclusive-remedy provision and exceptions to it). For this reason, we conclude Volpicelli was not entitled to declaratory relief.

We note that Volpicelli claimed he was not challenging his judgment of conviction. If this were true, Volpicelli would still not be entitled to declaratory relief. If he were not challenging the validity of his judgment of conviction, Volpicelli would have lacked standing to seek declaratory relief as he did not allege any facts that would show he suffered a personal injury based on the legislative amendments. See *Knittle v. Progressive Cas. Ins. Co.*, 112 Nev. 8, 10-11, 908 P.2d 724, 725-26 (1996) (requiring a plaintiff to establish standing to assert a claim for declaratory relief); see also *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) (providing that to establish standing, a plaintiff generally “must

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<sup>1</sup>We express no opinion whether Volpicelli can satisfy the procedural requirements of NRS Chapter 34.

show a personal injury"). Therefore, we conclude the district court did not abuse its discretion by denying Volpicelli's petition, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Egan K. Walker, District Judge  
Ferrill Joseph Volpicelli  
Attorney General/Carson City  
Washoe District Court Clerk

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<sup>2</sup>Insofar as Volpicelli raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.