

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO A. CRUZ,
Appellant,

vs.

BRIAN WILLIAMS, WARDEN; H.D.S.P.;
OFFENDER MANAGEMENT
DIVISION; AND THE STATE OF
NEVADA,
Respondents.

No. 87676-COA

FILED

JUL 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Francisco A. Cruz appeals from a district court order denying a postconviction petition for a writ of habeas corpus challenging the computation of time served. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

In his petition, filed on September 1, 2023, Cruz sought the application of statutory credits to his sentence. Cruz neither alleged nor demonstrated that he had exhausted his administrative remedies prior to filing the petition. Accordingly, we conclude the district court did not err by denying his petition.¹ See NRS 34.724(1), (2)(c).

¹The district court should have dismissed Cruz's petition without prejudice because he did not demonstrate that he had first exhausted his administrative remedies. See NRS 34.810(2). We nevertheless affirm for the reason stated above. 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).

On appeal, Cruz claims the district court erred by denying his petition without giving him enough time to respond to the State's response to his petition. Because the State did not move to dismiss his petition, Cruz was not allowed to file any additional pleadings without further order from the district court. *See* NRS 34.750(5). The district court did not order that he could file additional pleadings. We conclude Cruz failed to demonstrate the district court erred and, therefore, Cruz is not entitled to relief on this claim.

Cruz also claims on appeal that the district court erred by not addressing the fact that the State's response was untimely filed. The State filed a motion for an extension of time that was ultimately granted by the district court. Thus, the State's response was not untimely. We conclude that Cruz failed to demonstrate the district court erred and, therefore, Cruz is not entitled to relief on this claim.

Cruz also claims the district court erred by not appointing him counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Cruz appears to meet the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that no relief could be granted and, thus, denied the motion to appoint counsel. Because Cruz failed to allege or demonstrate

that he exhausted his administrative remedies prior to filing the petition, we cannot conclude the district court abused its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Joseph T. Bonaventure, Senior Judge
Chief Judge, Eighth Judicial District Court
Hon. Erika Ballou, District Judge
Francisco A. Cruz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²Cruz has requested the appointment of counsel on appeal. In light of this court's disposition, we conclude the appointment of counsel is not warranted.