

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88558-COA

FILED

JAN 31 2025

ELIZABETH A. BAY
CLERK OF SUPREME
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING APPEAL IN PART

Bennett Grimes appeals from district court orders denying a “motion to issue a ‘detainer’ to Nev. Dep’t of Corr’s (NDC), of ‘prisoner’s impending release,” filed on March 6, 2024 (motion), and a “petition for the court to dismiss or set aside the sentence (habeas corpus-not postconviction),” filed on March 21, 2024 (petition).¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, Grimes argues the district court erred by denying his motion. Because no statute or court rule permits an appeal from an order denying Grimes’ motion, this court lacks jurisdiction to consider this portion

¹Grimes filed two notices of appeal in district court case number C-11-276163-1. In the first, he designated the district court’s order denying both his motion and his petition. In his second notice of appeal, Grimes only indicated he was appealing the denial of the petition. In his opening brief on appeal, Grimes claims to also appeal from district court case number A-20-815590-W, a case that appears to address a postconviction petition for a writ of habeas corpus. But an order resolving a postconviction habeas petition in district court case number A-20-815590-W was not designated in the notices of appeal for this matter. See NRAP 3(c)(1)(B) (requiring a notice of appeal to “designate the judgment, order, or part thereof being appealed”). Therefore, any such order is not a part of the instant appeal before this court and is not considered in our disposition.

of the appeal. *Castillo v. State*, 106 Nev. 349, 352-53, 792 P.2d 1133, 1135 (1990). Accordingly, we dismiss this portion of Grimes' appeal.

Second, Grimes argues the district court erred by denying his petition. In his petition, Grimes appeared to claim: (1) the district court lacked jurisdiction to sentence him as a habitual criminal because the State's notice was untimely; (2) the State unnecessarily delayed its prosecution of him for attempted murder; (3) his sentence is grossly disproportionate and unduly harsh; (4) counsel was ineffective for failing to suppress evidence; (5) the initial charging documents improperly lacked an allegation of habitual criminality; (5) the Double Jeopardy clause prohibited imposition of consecutive sentences; and (6) mitigating factors warrant his release from prison.²

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 Grimes' imprisonment, as reflected in the record before this court, is a February 21, 2013, judgment of conviction. Grimes' claims were not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360.³ Therefore, we conclude the district court did not err by denying Grimes' petition.

²Grimes raises additional arguments on appeal that were not raised in his petition below. We decline to consider them in the first instance. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

³Grimes explicitly stated in the caption of his petition that it was not a postconviction habeas petition, and we note that Grimes' petition did not comport to the form required for postconviction habeas petitions. *See* NRS 34.735. Therefore, we do not construe Grimes' petition as a postconviction habeas petition. We note that Grimes' claims challenged the validity of his judgment of conviction or sentence, and a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the

Third, Grimes argues the district court erred by failing to enter findings of fact and conclusions of law regarding its denial of his petition. Because Grimes' petition was not a postconviction habeas petition, the district court was not statutorily required to enter findings of fact and conclusions of law. *Cf.* NRS 34.830(1). But even assuming the district court erred by not entering findings of fact and conclusions of law, we conclude Grimes has not shown that he is entitled to relief based on this claim because Grimes' claims were outside the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360. *See* NRS 178.598 (stating that any error that does not affect a defendant's substantial rights shall be disregarded).

Finally, Grimes argues that the district court erred by not allowing him to be present at the hearing denying his petition. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely stated its findings on the record. Grimes fails to demonstrate that he was prejudiced by his absence at the hearing. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a postconviction habeas petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Therefore, Grimes fails to demonstrate he is entitled to relief on this claim.⁴ Accordingly, we

validity of a judgment of conviction or sentence. NRS 34.724(2)(b). We express no opinion as to whether Grimes could meet the procedural requirements of NRS Chapter 34.

⁴To the extent Grimes makes other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

ORDER the judgment of the district court AFFIRMED IN PART AND DISMISS the appeal in part.⁵


_____, C.J.
Bulla


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Bennett Grimes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵The Honorable Deborah L. Westbrook did not participate in the decision in this matter.