

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ZANA,  
Appellant,  
vs.  
WARDEN BAKER,  
Respondent.

No. 90108-COA

**FILED**

**AUG 21 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *M. Jones*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Mark Zana appeals from a district court order denying a petition for a writ of habeas corpus filed on October 16, 2024. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Zana argues the district court erred by construing his petition as a postconviction petition for a writ of habeas corpus and denying it as procedurally barred because his petition was filed pursuant to NRS 34.360. In his petition, Zana claimed the trial court lacked jurisdiction to charge, convict, and sentence him for multiple counts of possession of visual representation depicting sexual conduct of a person under the age of 16 pursuant to NRS 200.730 for what Zana contended was a single offense. Zana also alleged that by charging, convicting, and sentencing him for multiple counts for a single offense, the trial court violated his double jeopardy and due process rights.


Zana explicitly argued below, and now explicitly argues on appeal, that his claims challenge the legality of his confinement pursuant to NRS 34.360. NRS 34.360 provides that a person “may prosecute a writ of habeas corpus to inquire into the cause of [his] imprisonment or restraint.” The cause of Zana’s imprisonment, as reflected in the record

before this court, is a July 30, 2023, amended judgment of conviction of open or gross lewdness, three counts of lewdness with a child under the age of 14, and six counts of possession of visual representation depicting sexual conduct of a person under the age of 16. Thus, Zana's claims were not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360.

Zana also appeared to argue that his claims were within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360 because "[t]he extraordinary remedy of habeas corpus is appropriate to test the legality of a conviction which is challenged on constitutional grounds," *Shum v. Fogliani*, 82 Nev. 156, 158, 413 P.2d 495, 496 (1966), and "the writ of habeas corpus is no longer confined to one of jurisdiction, but has been expanded to allow the presentation of questions of law that cannot otherwise be reviewed, or that are so important as to render ordinary procedure inadequate and justify the extraordinary remedy," *State ex rel. Orsborn v. Fogliani*, 82 Nev. 300, 302, 417 P.2d 148, 149 (1966). Both cases cited by Zana were decided prior to the current statutory scheme for postconviction relief which requires that Zana's claims, which challenge the validity of his judgment of conviction, be raised in a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. 435, 438-48, 329 P.3d 619, 621-28 (2014); *see also* NRS 34.724(2)(b) (stating that a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction). Further, the legal premise Zana cites from *Orsborn* is inapplicable here because Zana's claims are reviewable in a postconviction petition for a writ of habeas

corpus,<sup>1</sup> and he failed to demonstrate his claims were so important as to render the postconviction habeas procedures inadequate or to otherwise justify an extraordinary remedy. In light of these circumstances, we conclude the district court did not err by denying Zana's petition.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Crystal Eller, District Judge  
Mark R. Zana  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>We express no opinion as to whether Zana can satisfy the procedural requirements for a postconviction petition for a writ of habeas corpus.

<sup>2</sup>We conclude the district court erred by construing Zana's petition as a postconviction petition for a writ of habeas corpus because Zana'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).