

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT GORDON JOHNSTONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89857-COA

FILED

AUG 28 2025

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

ORDER OF AFFIRMANCE

Robert Gordon Johnstone appeals from a district court order denying a petition for a writ of habeas corpus filed on November 5, 2024,¹ and a later-filed pleading. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

First, Johnstone argues the district court erred by denying his petition. In his petition, Johnstone alleged that the district court lacked jurisdiction over his case because NRS 171.010 (providing that every person “is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States”) and a “Nevada federal territorial law” were unconstitutional. Under NRS 34.360, a person “may prosecute a writ of habeas corpus to inquire into the cause of [his] imprisonment or restraint.” Here, the cause of Johnstone’s imprisonment, as reflected in the record

¹Johnstone called this pleading “N.R.S. 34.360 and N.R.S. 34.724 also Rule 5 of Nev. Supreme Court.” Because Johnstone specifically argued below, and argues on appeal, that his petition was not a postconviction petition and was instead a petition for a writ of habeas corpus, we construe Johnstone’s pleading as a petition for a writ of habeas corpus filed pursuant to NRS 34.360.

before this court, is a September 21, 1976, judgment of conviction of two counts of first-degree murder. Johnstone's claim was not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360. Further, Johnstone's claim challenged the validity of his judgment of conviction and sentence, and a postconviction petition for a writ of habeas corpus is the exclusive remedy with which to challenge the validity of a judgment of conviction or sentence.² NRS 34.724(2)(b). Therefore, we conclude the district court did not err by denying Johnstone's petition.³

Next, Johnstone appears to argue the State violated his due process rights by changing his habeas petition into a postconviction petition for a writ of habeas corpus, including by changing the caption. In its opposition, the State construed Johnstone's petition as a postconviction petition for a writ of habeas corpus. However, the State's interpretation of Johnstone's petition had no bearing on the actual caption of his petition. Further, because Johnstone's claim was not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360, we conclude he fails to demonstrate the alleged errors impacted his substantial rights. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

²We express no opinion as to whether Johnstone could meet the procedural requirements of a postconviction petition for a writ of habeas corpus filed pursuant to NRS Chapter 34.

³The district court construed Johnstone's petition to be a postconviction petition for a writ of habeas corpus filed pursuant to NRS 34.720 through NRS 34.380. We conclude this was error because Johnstone's petition specifically argued he was not seeking postconviction relief. 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).

Finally, Johnstone appears to argue the State erred by filing proposed findings of fact and conclusions of law for the district court to sign. We disagree. A district court may request a party to submit proposed findings of facts and conclusions of law. *See Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007); *see also* EDCR 1.90(a)(4) (stating “the prevailing party shall submit a written order to the judge”); EDCR 7.21 (requiring the litigant obtaining any order or judgment to provide the court with a draft order of the same). Further, because Johnstone’s claim was not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360, we conclude he fails to demonstrate the alleged error impacted his substantial rights. *See* NRS 178.598. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
Robert Gordon Johnstone
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk