

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL STEVE COX,
Appellant,
vs.
THE STATE OF NEVADA, IN
RELATION TO THE NEVADA
DEPARTMENT OF CORRECTIONS;
ELY STATE PRISON; MCDANIEL;
BAKER; LT. HOUSTON; SGT.
LIGHTSEY; BOYNTON; KERR; COX;
AND CATHERINE CORTEZ MASTO,
Respondents.

No. 63585

FILED

FEB 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malm*
DEPUTY CLERK

MICHAEL STEVE COX,
Appellant,
vs.
THE STATE OF NEVADA; GREGORY
SMITH, WARDEN; AND RENEE
BAKER, WARDEN,
Respondents.

No. 63586

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court dismissing post-conviction petitions for a writ of habeas corpus.¹ Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. We elect to consolidate these appeals for disposition. *See* NRAP 3(b)(2).

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Docket No. 63585

In appellant's petition, which is largely unintelligible, filed on December 24, 2012, appellant appeared to challenge a disciplinary hearing. However, appellant did not raise any claims regarding a due process violation stemming from that hearing. *See Wolff v. McDonnell*, 418 U.S. 539, 563-71 (1974) (discussing the amount of process due to a prisoner in a disciplinary hearing). Rather, appellant appeared to allege that he chose not to attend a disciplinary hearing because correctional officers improperly refused to provide him ambulatory assistance for his disability and asked him to kneel down in order to place leg irons on him. These issues did not challenge a disciplinary proceeding, but rather challenged the prison's medical care and transportation procedures. Such claims challenged the conditions of appellant's confinement and a petition for a writ of habeas corpus was not the proper vehicle to raise such claims. *See Bowen v Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, the district court did not err in dismissing the petition.




Docket No. 63586

In appellant's petition filed on February 5, 2013, appellant claimed that the Nevada Department of Corrections had improperly calculated his good time credits for his primary offenses and the deadly weapon enhancements based on separate sentences rather than one sentence, thereby applying this court's holding in *Nevada Department of Prisons v. Bowen* retroactively and to his detriment. 103 Nev. 477, 481 n.4, 745 P.2d 697 700 n.4, (1987) (overruling *Biffath v. Warden*, 95 Nev. 260, 593 P.2d 51 (1979), and *Director, Prisons v. Biffath*, 97 Nev. 18, 621 P.2d 1113 (1981)) (holding that primary and enhancement sentences must be treated as separate sentences for all purposes, rather than treating them as one continuous sentence).

Appellant failed to demonstrate he was entitled to relief. Preliminarily, we note that appellant failed to provide an explanation for his 26-year delay in filing the instant petition and appears to have

acquiesced to the Department's treatment of his sentences. This delay makes a court's review of appellant's claims nearly impossible. Most importantly, appellant failed to demonstrate that he was prejudiced by the application of *Bowen* to his case because appellant failed to support his claim with sufficient factual allegations which, if true, would have entitled him to relief. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in dismissing the petition. Accordingly, we

ORDER the judgments of the district court AFFIRMED.²


Pickering, J.

Parraguirre, J.

Saitta, J.

²The district court denied both petitions because appellant failed to comply with an order declaring appellant a vexatious litigant, which restricted appellant's access to the Seventh Judicial District Court and required appellant to follow certain procedures whenever appellant attempts to initiate a "civil action." However, "habeas corpus is a proceeding which should be characterized as neither civil nor criminal for all purposes. It is a special statutory remedy which is essentially unique." *Hill v. Warden*, 96 Nev. 38, 40, 604 P.2d 807, 808 (1980). Therefore, the district court's vexatious-litigant order restricting appellant's access to the court in a civil action did not apply to a post-conviction petition for a writ of habeas corpus, which challenges a criminal conviction or computation of time served. See NRS 34.724(1). Accordingly, the district court erred in dismissing the petitions for failure to comply with an order that did not apply to the petitions at issue in these appeals. However, the district court reached the correct result as both petitions were without merit. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

cc: Hon. Steve L. Dobrescu, District Judge
Michael Steve Cox
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk