

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ADAM MCGUFFEY,
Appellant,
vs.
JAMES GREG COX, DIRECTOR OF
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondent.

No. 70427

FILED

OCT 11 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Appellant Robert Adam McGuffey, an inmate, filed a petition for a writ of mandamus in the district court, requesting an order directing respondent to assign him to "the Restitution Center." In reviewing this petition, the district court determined that McGuffey was seeking an order directing respondent to assign him to a center where he could earn wages to make restitution to his victim(s), *see* NRS 209.4827(1) (authorizing the establishment of such centers), and concluded that although McGuffey alleged that he had been denied his requested assignment based on an improper administrative regulation, he failed to set forth allegations sufficient to demonstrate that he was otherwise eligible for such an assignment. In particular, the district court found that McGuffey did not allege that space was available for him at his preferred center, *see* NRS 209.4827(2) (authorizing assignment of certain inmates to centers

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established under NRS 209.4827(1) on a space-available basis), or that he had been ordered to pay restitution pursuant to NRS 176.033. *See* NRS 209.4829 (providing that the NDOC director may assign an inmate to a center established under NRS 209.4827(1) only if he or she meets certain eligibility criteria, including a requirement that the inmate has been ordered to pay restitution under NRS 176.033). As a result, the district court denied McGuffey's petition. This appeal followed.

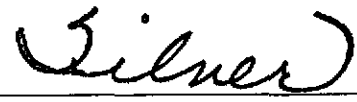
On appeal, McGuffey does not challenge the district court's construction of his petition or its determination that his allegations were insufficient to establish that he was eligible for his requested assignment under NRS 209.4827(2) and NRS 209.4829. Instead, McGuffey presents new arguments attempting to explain how he met the criteria for assignment to a restitution center set forth in those statutes in an apparent attempt to redress the deficiencies identified by the district court. But we cannot consider arguments that were not presented to the district court during the proceedings below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."); *see also Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal."). As a result, appellant has failed to establish that the district court abused its discretion in denying his petition for a writ of mandamus. *See City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58, 63 P.3d 1147, 1148 (2003) (reviewing a district court's order denying a petition for a writ of mandamus for an abuse of discretion); *see also Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004)

(concluding, in resolving a petition for a writ of mandamus filed in the supreme court, that the petitioner bears the burden of establishing that an extraordinary remedy is warranted). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Alvin R. Kacin, District Judge
Robert Adam McGuffey
Attorney General/Carson City
Elko County Clerk

¹In light of our conclusion herein, we need not consider McGuffey's remaining arguments on appeal.