

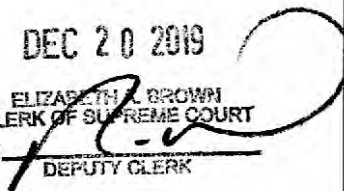
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DALE WALTER WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78475-COA

FILED

DEC 20 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Dale Walter Ward appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 30, 2018. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Ward was convicted in 1999, pursuant to an *Alford*¹ plea, of possession of a controlled substance and felon in possession of a firearm. He was ultimately sentenced to 24 to 82 months in prison. In the instant petition, Ward sought an order setting aside his sentence and vacating his conviction. The district court denied the petition, finding that Ward was no longer in custody in the underlying criminal case and the petition was procedurally barred.

On appeal, Ward challenges the district court's application of procedural bars and its failure to consider various equitable concerns and the validity of Ward's plea. However, "a district court may not issue a writ of habeas corpus if the post-conviction petitioner filed the petition challenging the validity of a conviction after having completed the sentence

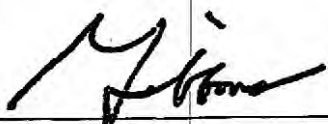
¹*North Carolina v. Alford*, 400 U.S. 25 (1970).


for the challenged conviction.” *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999). And Ward does not dispute that he expired his sentence prior to filing the instant petition. The district court was thus prohibited from granting Ward’s petition. We therefore conclude the district court did not err by denying Ward’s petition.

Ward also contends the district court should have “transmute[d] the action to an Error Coram Nobis action.” Ward did not raise this argument below, and we need not consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Moreover, even assuming the district had construed Ward’s petition as seeking a writ of coram nobis, Ward’s claims were not of a factual nature and, thus, would have been outside the scope of such a petition. *See Trujillo v. State*, 129 Nev. 706, 716-18, 310 P.3d 594, 601-02 (2013).

Finally, because the district court could not have granted Ward any relief, we conclude it did not abuse its discretion by denying Ward’s request for the appointment of postconviction counsel. *See* NRS 34.750(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Dale Walter Ward
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk