

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 79955-COA

**FILED**

JUL 24 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Charles Matthew Wirth appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 29, 2018. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Wirth argues the district court erred by denying his petition as procedurally barred under the successive procedural bar. Specifically, Wirth claims the district court erred by finding the work credits claim raised in his petition was raised in a previous petition and the determination of that claim was on the merits. We ordered the State to file a response.

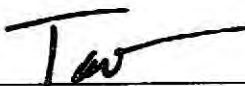
In response, the State concedes Wirth did not raise work credits in his previous petition. Instead, the first time the work credits issue was raised was at the evidentiary hearing held on Wirth's previous petition. The State argues that the district court's previous order addressed Wirth's work credits on the merits and, therefore, Wirth's claim was procedurally barred.

To bar a petition under the successive procedural bar, the district court must determine that the petition fails to allege new or different grounds for relief and the prior determination of the claim was on the merits. See NRS 34.810(2). The district court's order denying the

previous petition did not specifically address the work credits complained of here. Instead, the district court's order focused specifically on ground one of the previous petition that related to vocational credits. Therefore, it does not appear the district court exercised its discretion to expand the claims raised in Wirth's petition to encompass the work credits claim, *see Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 651-52 (2006), and there has never been a merits determination on that claim. Thus, we conclude the district court erred by denying Wirth's petition as procedurally barred under the successive bar. Therefore, we reverse the district court's order denying the petition as procedurally barred and remand this matter to the district court to consider the petition on the merits. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Tao

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

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<sup>1</sup>Wirth argues on appeal that the district court clerk's office failed to stamp his documents received and failed to timely send him documents. Wirth did not raise this claim below; therefore, we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

cc: Hon. Jim C. Shirley, District Judge  
Charles Matthew Wirth  
Attorney General/Carson City  
Pershing County Clerk