

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN RAY HOLMES,
Appellant,
vs.
NEVADA ATTORNEY GENERAL; THE
STATE OF NEVADA; WARDEN; AND
WSCC,
Respondents.

No. 79763-COA

FILED

OCT 16 2020

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

ORDER OF AFFIRMANCE

Kevin Ray Holmes appeals from an order of the district court dismissing a petition for a writ of habeas corpus filed on August 7, 2019. First Judicial District Court, Carson City; William A. Maddox, Senior Judge.

In his petition, Holmes challenged a court order requiring him to provide a biological sample pursuant to NRS 176.0913. Holmes' claim was not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360, because his claim did not "inquire into the cause of [his] imprisonment or restraint." NRS 34.360. The cause of Holmes' imprisonment, as revealed by the record before this court, was the judgment of conviction filed on December 7, 1999, for Holmes' convictions for first-degree murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon. Therefore, Holmes was not entitled to relief.

Holmes argues the district court erred by dismissing his petition as outside the scope of a postconviction petition for a writ of habeas corpus, because he filed his petition pursuant to NRS 34.360 and not pursuant to the postconviction petition statutes located in NRS 34.720

through NRS 34.830. The district court should not have dismissed the petition as outside the scope of a postconviction petition because Holmes specifically did not file a postconviction petition. However, because Holmes' claim was outside the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360, we conclude the district court properly denied relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Kevin Ray Holmes
Attorney General/Carson City
Carson City Clerk