

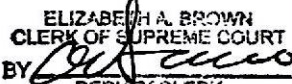
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PEDRO JOSE GARCIA,
Appellant,
vs.
ISIDRO BACA, WARDEN, WARM
SPRINGS CORRECTIONAL CENTER,
Respondent.

No. 81669-COA

FILED

JAN 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Pedro Jose Garcia appeals from an order of the district court dismissing a May 26, 2020, postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

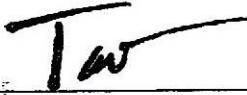
First, Garcia argues the district court erred by dismissing his petition for failure to exhaust administrative remedies. Garcia contends he did not have to pursue the Nevada Department of Corrections' (NDOC) administrative remedies because his claim encompassed a nongrievable issue. NDOC Administrative Regulation 740.03(3) plainly states that "inmate claims arising out of, or relating to, issues within the authority and control of the Department may be submitted for review and resolution." In his petition, Garcia sought the application of statutory credits toward his parole eligibility date. Garcia's claim was clearly an issue within the authority and control of NDOC. Therefore, Garcia was required by NRS 34.724(2)(c) to exhaust administrative remedies prior to pursuing postconviction relief, and we conclude the district court did not err by dismissing the petition. *See* NRS 34.810(4).

Second, Garcia appears to argue the district court erred by dismissing the petition without allowing him the opportunity to oppose the

State's motion to dismiss. *See* NRS 34.750(4) (providing petitioners 15 days to respond to State's motion to dismiss). As Garcia failed to exhaust administrative remedies prior to filing the petition, and the district court thus properly dismissed the petition pursuant to NRS 34.810(4), Garcia does not demonstrate he was prejudiced by any failure of the district court to permit him additional time to oppose the State's motion to dismiss. We therefore conclude Garcia is not entitled to relief. *See* NRS 178.598. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Pedro Jose Garcia
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk