

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES RICKY HARO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81928-COA

**FILED**

**DEC 16 2021**

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

*ORDER OF AFFIRMANCE*

James Ricky Haro appeals from an order of the district court denying his June 11, 2020, petition for a writ of coram nobis or, in the alternative, motion to withdraw guilty plea. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.


Haro argues the district court erred by denying his petition for a writ of coram nobis. In his petition, Haro contended that he recently discovered that the victim recanted her allegations against him and he should therefore be permitted to withdraw his guilty plea.

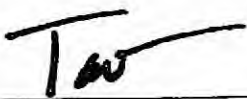
The Nevada Supreme Court has explained that, in Nevada state courts, “the writ of coram nobis may be used to address errors of fact outside the record that affect the validity and regularity of the decision itself and would have precluded the judgment from being rendered.” *Trujillo v. State*, 129 Nev. 706, 717, 310 P.3d 594, 601 (2013). The scope of a petition for a writ of coram nobis is “limited to errors involving facts that were not known to the court, were not withheld by the defendant, and would have prevented entry of the judgment.” *Id.* “A writ of coram nobis is not, however, the forum to relitigate the guilt or innocence of the petitioner,” and “a factual error does not include claims of newly discovered evidence

because these types of claims would not have precluded the judgment from being entered in the first place.” *Id.* Haro’s claim concerning the victim’s recantation was not properly raised in a petition for a writ of coram nobis because it did not involve errors of fact that would have precluded the judgment from being rendered. Accordingly, we conclude the district court did not err by denying Haro’s petition.

To the extent Haro sought to pursue a postconviction motion to withdraw guilty plea, such a motion is properly construed as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014). Haro expired his sentence in 2017, and he was not in custody when he filed his petition. Therefore, a postconviction petition for a writ of habeas corpus was not an available remedy. *See Nev. Const. art. 6, § 6(1)* (setting forth a custody requirement for habeas corpus); *NRS 34.724(1)* (providing that a habeas petition is available to a person under a sentence of imprisonment or death); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999) (concluding that a petitioner was not entitled to file a postconviction petition for a writ of habeas corpus when he was no longer incarcerated pursuant to the judgment of conviction contested). Accordingly, we conclude the district court properly concluded that Haro was not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Department 23  
Mueller & Associates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk