

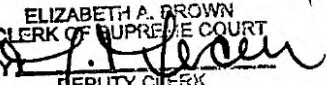
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD DOUGLAS EBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84684-COA

FILED

JAN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Donald Douglas Eby appeals from an order of the district court denying a “request for sua sponte motion by the court to vacate judgment of conviction and entry of full exoneration order” (request). Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

In his March 1, 2022, request, Eby claimed that the trial court erroneously instructed the jury regarding intent. In light of the nature of Eby’s claim, the district court construed Eby’s request as a postconviction petition for a writ of habeas corpus, *see* NRS 34.724(2)(b); *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014), or, in the alternative, as a motion for a new trial or to vacate judgment, *see* NRS 176.515.

In so far as the district court construed the request as a postconviction petition for a writ of habeas corpus, Eby indicated that he had completed his sentence prior to filing the request. In response to an order of this court, the Attorney General advised that Eby discharged his sentence in the underlying case on May 21, 2020. Because Eby discharged his sentence prior to filing the request, it was not cognizable as a postconviction petition for a writ of habeas corpus. *See* Nev. Const. art. 6, § 6(1); NRS 34.724(1); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242

(1999). Therefore, we conclude the district court did not err by denying habeas relief.¹

In so far as the district court construed the request as a motion for new trial or to vacate judgment pursuant to NRS 176.515, we review the district court's denial of a motion for a new trial for an abuse of discretion. *State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). Eby's request was filed more than three years after the jury reached its verdict on April 6, 2018. Thus, Eby's request was not timely filed, and it did not meet the threshold requirement to be vacated. See NRS 176.515(2), (3), (4). Therefore, we conclude the district court did not abuse its discretion by denying the request for new trial or to vacate judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹Although the district court incorrectly considered whether Eby's request was procedurally barred, we nevertheless affirm its denial for the reason discussed above. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

²We have reviewed Eby's reply filed on January 9, 2023, and we conclude no relief is warranted.

cc: Hon. Thomas W. Gregory, District Judge
Donald Douglas Eby
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk