

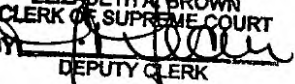
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN JAMES FITZSIMMONS,
Appellant,
vs.
KYLE OLSEN, WARDEN,
Respondent.

No. 85522-COA

FILED

MAR 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin James Fitzsimmons appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus challenging the computation of time served. First Judicial District Court, Carson City; James E. Wilson, Judge.

Fitzsimmons contends the district court erred by dismissing his July 18, 2022, petition. The district court determined that Fitzsimmons failed to exhaust his administrative remedies before filing his petition. However, the district court did not make factual findings in support of its decision. Nevertheless, even if the district court's determination was erroneous, *see* NRS 34.830(1), we affirm the district court's order because it reached the correct result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Fitzsimmons previously filed a postconviction petition for a writ of habeas corpus challenging the computation of time served that was decided on the merits.¹ Fitzsimmons' petition was successive to the extent

¹*See Fitzsimmons v. Russell*, No. 82350-COA, 2021 WL 2935644 (Nev. Ct. App. July 12, 2021) (Order of Affirmance).

it alleged grounds for relief that had previously been decided on the merits, and it constituted an abuse of the writ to the extent it raised new and different grounds for relief. *See* NRS 34.810(2). Therefore, Fitzsimmons' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(3). Fitzsimmons did not allege good cause to overcome the procedural bars. Accordingly, we conclude the district court did not err by dismissing the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. James E. Wilson, District Judge
Kevin James Fitzsimmons
Attorney General/Carson City
Carson City Clerk