

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
CALVIN JOHNSON, WARDEN HDSP,
Respondent.

No. 86765-COA

FILED

JAN 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Elvin Turner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 5, 2023. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

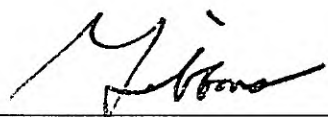
In his petition, Turner claimed that he was unlawfully detained after being arrested. Turner's claim was outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction entered pursuant to a guilty plea. *See* NRS 34.810(1)(a). Therefore, we conclude that the district court did not err by denying Turner's petition.

On appeal, Turner argues that the district court erred by not allowing him to be present at the hearing denying his petition. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely stated its findings on the record. Turner fails to demonstrate that he was prejudiced by his absence at the hearing. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were


presented). Therefore, Turner fails to demonstrate he is entitled to relief on this claim.

Turner also claims the district court abused its discretion by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because Turner sought to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Turner met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that the issues in this matter were not difficult, Turner was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
John Elvin Turner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk