

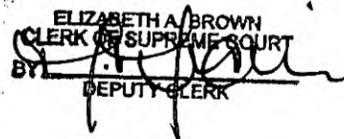
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH NAPOLEON WARREN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85892-COA

FILED

AUG 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Napoleon Warren, III, appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 15, 2022. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

The district court found that, at the time Warren filed his petition, he had already expired his sentence and was not in custody pursuant to the judgment of conviction at issue in this case. Warren does not dispute these findings, and they are supported by the record on appeal. A postconviction petition for a writ of habeas corpus is not available to prisoners who have completed the sentence imposed by the judgment of conviction and are no longer in custody. Nev. Const. art. 6, § 6(1); NRS 34.724(1); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999). Accordingly, we conclude the district court did not err by denying Warren's petition.

On appeal, Warren argues the district court erred by failing to conduct an evidentiary hearing and by conducting a hearing outside his presence. For the reasons discussed above, Warren was not entitled to an evidentiary hearing. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d

222, 225 (1984) (holding that to warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief). Further, because no evidence was taken at the hearing on the petition, we conclude the district court did not err by conducting the hearing outside Warren's presence. *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 evidence was presented). Accordingly, we conclude Warren is not entitled to relief on these claims, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Joseph Napoleon Warren, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk