

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN BATTISTA GIORDANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69954

FILED

JUL 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. Hendrich
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

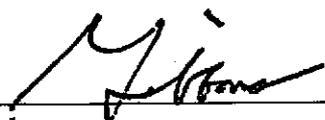
Appellant John Giordano claims the district court erred by denying his claim that his statutory credits pursuant to NRS 209.445 should be subtracted from his minimum sentence rather than his maximum sentence.¹ The district court concluded this claim was improperly raised in a postconviction petition challenging a judgment of conviction and sentence because it was a challenge to the computation of time served, *see* NRS 34.724; NRS 34.738(3), and denied it. We agree with the district court.

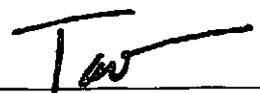
In his petition and supplemental petition, Giordano raised claims challenging both the judgment of conviction and the computation of time served. The district court correctly resolved the portion of the

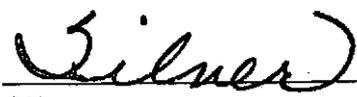
¹Giordano specifically abandoned the other claims raised in his petition filed in the district court on February 27, 2015, and his supplemental petition filed in the district court on September 28, 2015.

petition challenging the judgment of conviction. See NRS 34.738(3). While the district court should have dismissed the computation of time served portion of the petition without prejudice, see *id*, the district court correctly refused to hear the claim on the merits. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason). A computation-of-time-served claim must be raised in a postconviction petition filed in the county in which the petitioner is incarcerated. See NRS 34.738(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
Bailus Cook & Kelesis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk