

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

KURT A. MOROZKO,
Petitioner/Appellant,

v.

JOSH TEWALT, DIRECTOR, IDAHO DEPARTMENT OF CORRECTIONS,
Respondent/Appellee.

No. 2 CA-HC 2022-0006
Filed October 5, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV202200107
The Honorable Robert C. Olson, Judge

AFFIRMED

Kurt A. Morozko, Eloy
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eckerstrom and Judge Cattani concurred.

V Á S Q U E Z, Chief Judge:

¶1 Appellant Kurt Morozko challenges the trial court’s order denying his petition for writ of habeas corpus. For the following reasons, we affirm.

¶2 Based on the scant record before us, it appears that in August or September 2021, Morozko was transferred from the Idaho Department of Corrections (IDOC) to CoreCivic, a private prison facility in Arizona. Morozko claims the transfer occurred pursuant to the Western Interstate Corrections Compact (WICC). *See* A.R.S. §§ 31-471 to 31-475. In January 2022, Morozko filed a petition for writ of habeas corpus and an addendum. He argued the following: 1) the WICC is unconstitutional; 2) the IDOC violated his constitutional rights when it delegated authority to imprison him to CoreCivic; 3) the IDOC and CoreCivic violated his right to due process because the contract between them violates the WICC, specifically, because CoreCivic is not operating under the jurisdiction of the Arizona Department of Corrections; 4) his placement “seriously endangers [his] life and . . . or health,” thereby violating the Eighth Amendment’s prohibition against cruel and unusual punishment; and, 5) the IDOC and CoreCivic violated his constitutional rights “by seizing and . . . or losing legal material” belonging to him, denying him the right to use the material in a subsequent court proceeding. Morozko requested that he be returned to Idaho “or other such compliant facility,” and that CoreCivic and the IDOC be ordered to respond to his petition.

¶3 The trial court denied Morozko’s petition, concluding he had failed to state a claim for relief. It explained that Arizona was “without power” to transfer him back to Idaho under the WICC. The court additionally noted that Morozko had failed to show that his confinement falls under the WICC, observing he had “alleged a contract between . . . Idaho and a private prison, not . . . Arizona,” and explaining that he had “provided no authority for the proposition that an Arizona court has jurisdiction over this contract.” Finally, the court noted “that the relevant

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issues raised in this Petition are currently or recently pending in a grievance process with the [IDOC] and in the District Court of the State of Idaho.”

¶4 “[T]he purpose of a writ of habeas corpus is to test the legality and correctness of a prisoner’s judgment and confinement.” *Griswold v. Gomes*, 111 Ariz. 59, 62 (1974). Pursuant to A.R.S. § 13-4121, “[a] person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may petition for and prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.” Habeas corpus “is not the appropriate means to order something less than ‘absolute release.’” *Long v. Ariz. Bd. of Pardons & Parole*, 180 Ariz. 490, 494 (App. 1994) (quoting *Escalanti v. Dep’t of Corr.*, 174 Ariz. 526, 527 n.1 (App. 1993)). We review the denial of a writ of habeas corpus for abuse of discretion. *State v. Cowles*, 207 Ariz. 8, ¶ 3 (App. 2004).

¶5 On appeal, Morozko contends the trial court erred by denying his petition for writ of habeas corpus. He maintains that, “while an Arizona court may be without power to transfer an inmate to Idaho,” the very relief he requested here, it nonetheless may enforce the provisions of the WICC to grant him that relief. He also asserts the court incorrectly determined that some of the issues he raised were “currently or recently pending in a grievance process” in Idaho, maintaining, with minimal support, that the Idaho court dismissed his claims in November 2021 “due to lack of evidence to state a claim upon which relief could be granted.” Morozko also reasserts his claim that certain legal material belonging to him, confiscated by the IDOC, was ultimately lost and thus was not available for him to use at an October 2021 hearing. Finally, he generally asserts that his claims were either ignored by the Idaho staff or were “non-grievable” issues.¹

¶6 However, because Morozko is not seeking a claim for release, but is instead seeking a transfer to Idaho, he has failed to state a claim upon which habeas corpus relief can be granted. See *Findlay v. Lewis*, 172 Ariz. 343, 345 (1992) (trial court properly dismissed, for failure to state a claim, habeas petition that sought transfer to Utah prison). The purpose of habeas

¹Insofar as Morozko also attempts to present an argument regarding exhaustion of remedies and the applicability of federal law for the first time in his opening brief, we note that he did not present that argument to the trial court below. We therefore do not consider it. See *Powell v. State*, 19 Ariz. App. 377, 379 (1973) (“With limited exceptions . . . propositions not raised in the court below in a habeas corpus proceeding will not be considered on appeal.”).

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corpus is to release one who is unlawfully detained. A.R.S. § 13-4131; *Sims v. Ryan*, 181 Ariz. 330, 332 (App. 1995); cf. *Bunn v. Conley*, 309 F.3d 1002, 1007 (7th Cir. 2002) (if prisoner is “seeking a different program or location or environment, then he is challenging the conditions rather than the fact of his confinement and his remedy is under civil rights law” (quoting *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991))). Again, because Morozko is not seeking absolute discharge from custody, see *Long*, 180 Ariz. at 494, the trial court properly found he was not entitled to habeas corpus relief.² See *State v. Perez*, 141 Ariz. 459, 464 (1984) (appellate court obliged to affirm trial court’s ruling if result legally correct for any reason).

¶7 Moreover, because Morozko has not established, much less specifically argued, that the purported loss of his legal documents would entitle him to release, habeas corpus relief is not appropriate as to that claim. We likewise reject Morozko’s assertion, raised in his petition below, that CoreCivic’s treatment of him constitutes cruel and unusual punishment. See *Foggy v. State ex rel. Eyman*, 107 Ariz. 532, 533-34 (1971) (habeas corpus “may not be utilized for the purpose of correcting alleged mistreatment of a prison inmate by prison authorities subsequent to valid judgment and commitment” (quoting *In re Dutton v. Eyman*, 95 Ariz. 96, 97 (1963))).

¶8 Accordingly, we affirm the trial court’s denial of Morozko’s petition for writ of habeas corpus.

²In light of our ruling, we decline to address the trial court’s suggestion that Morozko’s confinement in a private facility may not fall under the WICC or Morozko’s challenge to the constitutionality of the WICC as applied here. Assuming the WICC applies in these circumstances, we generally note that “[p]risoners have no constitutional right to be incarcerated in a particular prison or state, and agreements such as the WICC are constitutional.” *Salstrom v. State*, 148 Ariz. 382, 384 (App. 1986) (citing *Olin v. Wakinekona*, 461 U.S. 238 (1983)).