

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK J. BERALDO,
Petitioner,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL AND THE STATE OF
NEVADA, OFFICE OF THE ATTORNEY
GENERAL,
Respondents.

No. 43152

FILED

MAY 04 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

This original post-conviction petition for a writ of habeas corpus collaterally attacks petitioner's 1996 conviction of two counts of sexual assault with substantial bodily harm, battery with intent to commit sexual assault, and battery causing substantial bodily harm. This court affirmed petitioner's conviction on direct appeal.¹ This court also affirmed the district court's order denying petitioner's first state post-conviction petition.² In the instant petition, it appears that petitioner is attempting to present post-conviction claims that may be considered unexhausted in state court for purposes of federal habeas review.


This court will not consider such post-conviction claims collaterally attacking a conviction or sentence in the first instance. Petitioner's remedy, if any, is to first file a post-conviction petition for a


¹See Beraldo v. State, Docket No. 29466 (Order Dismissing Appeal, filed May 28, 1999).


²Beraldo v. State, Docket No. 38461 (Order of Affirmance, filed November 5, 2002).

writ of habeas corpus in the appropriate Nevada district court in accordance with the statutory scheme set forth in NRS chapter 34. Such a petition must demonstrate either good cause and prejudice or a fundamental miscarriage of justice sufficient to overcome any applicable procedural bars.³ Petitioner may then appeal any adverse decision of the district court to this court.⁴ Accordingly, having concluded that this court's intervention is not warranted, we hereby

ORDER the petition DENIED.⁵


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Frank J. Beraldo
Attorney General Brian Sandoval/Carson City

³See NRS 34.726(1); NRS 34.745(4); NRS 34.800; NRS 34.810; see also Pellegini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001).

⁴See NRS 34.575(1).

⁵We deny petitioner's motion to proceed in forma pauperis as moot.