

IN THE SUPREME COURT OF THE STATE OF NEVADA

JODY BACON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43994

FILED

OCT 19 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction and sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Jody Bacon was convicted, pursuant to a jury verdict, of three counts of sexual assault of a minor under the age of fourteen, four counts of lewdness with a child under the age of fourteen, two counts of lewdness with a child under the age of fourteen with the use of a deadly weapon, and one count of first-degree kidnapping. The district court sentenced Bacon to serve terms totaling 70 years to life in prison.

Bacon's sole contention on direct appeal is that his trial counsel were ineffective and failed to subject the State's case to adversarial testing.

Generally, challenges to counsel's effective representation are best raised in a post-conviction petition for a writ of habeas corpus in the district court, so that an evidentiary hearing can be conducted to review

and resolve factual uncertainties.¹ However, such claims may be appropriate for review on direct appeal if the defendant can demonstrate that the error is undisputed, apparent from the record, and purely a matter of law,² or if the error was "improper per se," such that an evidentiary hearing to establish counsel's strategic or tactical motivations would be unnecessary.³

Bacon argues counsel committed seven specific errors that warrant review on direct appeal rather than in a post-conviction petition for a writ of habeas corpus: (1) failure to investigate; (2) failure to file a motion to suppress evidence derived from a search of Bacon's vehicle based on lack of probable cause to stop the vehicle; (3) stipulation to the chain of custody of "certain evidence;" (4) giving a short opening statement that simply asked the jury to make sure the State proved its case; (5) failure to present any evidence or call any witnesses during the defense's case in chief; (6) failure to cross-examine Officer Cripe about the difference between his report and his testimony and to cross-examine the victim more fully about inconsistencies in her previous testimony; and (7) failing to attack the State's case during closing argument.

¹Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013-14 (2001).

²Id.

³Jones v. State, 110 Nev. 730, 737, 877 P.2d 1052, 1056 (1994).

Having reviewed the record provided on appeal, we conclude that counsel's performance in each of the seven areas was not improper per se, and Bacon's claims are not undisputed, matters of record, or purely questions of law. We therefore decline to consider these claims on direct appeal

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Patti & Sgro, P.C.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk