

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNIE DEAN PEARROW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44209

FILED

MAY 10 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order dismissing appellant Ronnie Dean Pearrow's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

Pearrow was convicted, pursuant to a jury verdict, of sexual assault of a child and lewdness with a child under the age of 14 years. The district court sentenced Pearrow to two concurrent life terms in the Nevada State Prison with the possibility of parole. This court affirmed Pearrow's conviction and sentence.¹ The remittitur issued on May 6, 2003.

On July 2, 2003, Pearrow filed a petition for a writ of habeas corpus. Thereafter, the State filed a motion to dismiss the petition on the grounds that Pearrow failed to support his petition with specific factual allegations, that law of the case barred some of his claims, and that his remaining claims were only appropriate for a direct appeal. On September 14, 2004, Pearrow filed a notice of nonopposition to the State's motion. The district court granted the State's motion to dismiss on October 7, 2004. This appeal followed.

¹Pearrow v. State, Docket No. 39963 (Order of Affirmance, April 9, 2003).

On appeal, Pearrow claims that the district court erred in dismissing his petition without an evidentiary hearing, failing to present findings of fact and conclusions of law, and failing to render a judgment. Pearrow further argues that this court's decision in Valerio v. State² places undue restrictions on his right to receive an adequate review of his claims and precludes federal habeas review; therefore, he requests that we overturn Valerio and allow him to relitigate his insufficiency of the evidence claim. Finally, it appears that Pearrow claims that this court's affirmance of his conviction and sentence via an unpublished order precluded an adequate review of the merits of his claim that the child victim consented to the conduct that gave rise to the charges.

Pearrow asserted five claims in his habeas petition: that there was insufficient evidence to support his conviction; that he was denied a fair trial due to the admission of prior bad act evidence; that the elements test in Blockburger v. United States³ should have been used; the State had a duty to request an instruction on the limited use of prior bad act evidence; and that there can be no assault on a consenting child pursuant to State v. Pickett,⁴ NRS 200.36 [sic], and NRS 200.364.

Respecting his first claim, Pearrow argues that the evidence was legally insufficient to support his conviction. However, this court considered and rejected this claim in his direct appeal. Therefore, the law of the case barred reconsideration of this claim.⁵

²112 Nev. 383, 915 P.2d 874 (1996).

³284 U.S. 299 (1932).


⁴11 Nev. 255 (1876).


⁵See Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).


Pearrow fails to provide any factual allegations whatsoever to substantiate his remaining claims.⁶ Moreover, these claims are only appropriate for a direct appeal, thus requiring the district court to dismiss his habeas petition.⁷ To avoid dismissal, Pearrow must demonstrate good cause for his failure to present his claims on direct appeal and that he suffered actual prejudice.⁸ We conclude he fails to do so. We further conclude that our opinion in Valerio does not hinder review of Pearrow's claims, and we decline his invitation to overturn our decision.

Having reviewed the record on appeal and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Gibbons

⁶See Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996), abrogated on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁷See NRS 34.810(1)(b)(2).

⁸See NRS 34.810(3).

cc: Second Judicial District Court Dept. 9, District Judge
Roger R. Harada
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk