

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER WILLIAM HULL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44376

FILED

SEP 14 2005

ORDER OF AFFIRMANCE

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

This is an appeal from the district court's denial of a post-conviction petition for writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On April 26, 2001, the district court convicted appellant, pursuant to a jury verdict, of lewdness with a child under the age of fourteen years and sexual assault. The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole after serving ten years and twenty years, respectively, in the Nevada State Prison. This court affirmed the judgment of conviction.¹ The remittitur issued on April 8, 2003.

On May 8, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel pursuant to NRS 34.750, but declined to conduct an evidentiary hearing pursuant to NRS 34.770. On September 10, 2004, the district court denied appellant's petition. This appeal followed.

¹Hull v. State, Docket No. 37953 (Order of Affirmance, January 31, 2003).

In his petition, appellant contends that the district court erred in dismissing his petition without an evidentiary hearing. A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief.² The petitioner has the burden of establishing the factual allegations in support of his petition.³ The petitioner is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record.⁴

Appellant claimed that he was immune from prosecution pursuant to NRS 432B.160, which grants immunity to those reporting child abuse or neglect. The district court denied appellant's petition on the merits, stating that NRS 432B.160 grants immunity for the act of reporting, but not for abusive acts.

First, we note that this claim is waived as it should have been raised on direct appeal, and appellant did not demonstrate good cause for his failure to do so.⁵ We conclude that the district court erred in reaching the merits of appellant's petition because appellant's claim was waived, but we affirm the order of the district court because the district court reached the correct result in denying appellant's petition. Moreover, as a separate and independent ground for denying relief, we conclude that the district court did not err in determining that appellant's challenge lacked

²Hargrove v. state, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

³Bejarano v. Warden, 112 Nev. 1466, 1471, 929 P.2d 922, 925 (1996).

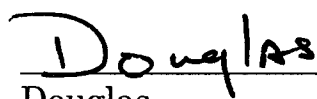
⁴Id. at 503, 686 P.2d at 225.

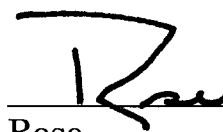
⁵NRS 34.810(1)(b).

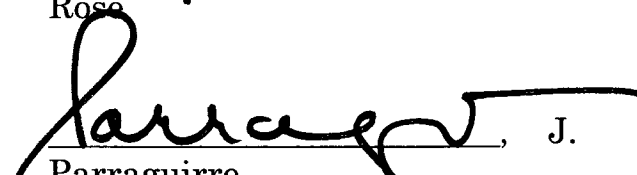
merit and was repelled from the record. Appellant's arrest and conviction did not originate from the report that appellant made to authorities, but rather from the testimony of his daughter in a preliminary hearing on another molest case in which she implicated appellant. Additionally, the district court did not err in finding that NRS 432B.160 grants immunity to those who report abuse or neglect, not to those who inflict abuse or neglect. To hold otherwise would produce absurd results in which abusers would never be criminally prosecuted as long as they reported their own crime. Therefore, the district court did not err in denying appellant an evidentiary hearing.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

⁶Because appellant is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to appellant unfiled all proper person documents he has submitted to this court in this matter.

cc: Hon. Janet J. Berry, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk