

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANSELL MATRIA JORDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45957

FILED

FEB 21 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On April 10, 2003, the district court convicted appellant, pursuant to a jury verdict, of sexual assault of a child. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years, as well as a special sentence of lifetime supervision. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on July 27, 2004.

¹Jordan v. State, Docket No. 41414 (Order of Affirmance, July 1, 2004).

On July 26, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 23, 2005, the district court denied appellant's petition. This appeal followed.

First, appellant claimed the evidence supporting his conviction was insufficient. This court has already concluded that there was sufficient evidence to support appellant's conviction. Once this court has ruled on the merits of an issue, the ruling is the law of the case and the issue will not be revisited.³ Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed the district court erred in refusing to allow him to present evidence of the victim's prior sexual conduct. Appellant failed to bring this claim in his direct appeal. The claim is therefore waived absent a showing of good cause and prejudice.⁴

²The district court did not order a response from the State. In a subsequent submission to this court, appellant requested we remand the case to allow the State the opportunity to respond. The State has not sought that opportunity, and we decline to order a remand to allow the State to respond when the State does not make that request itself. Appellant has no right to file a supplemental pleading except as provided by NRS 34.750.

³Pellegrini v State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

⁴NRS 34.810(1)(b).

Appellant failed to show either good cause or prejudice. As a separate and independent ground for denying this claim, we conclude that the claim lacked merit. The evidence was barred by NRS 50.090, and appellant presented no special circumstances to overcome that statutory bar. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed the district court erred in refusing to grant him a mistrial after a witness made a statement suggesting appellant had engaged in prior criminal activity. Appellant failed to bring this claim in his direct appeal. The claim is therefore waived absent a showing of good cause and prejudice.⁵ Appellant failed to show either good cause or prejudice. As a separate and independent ground for denying this claim, we conclude that the claim lacked merit. This court has previously held that "inadvertent references to other criminal activity not solicited by the prosecution, which are blurted out by a witness, can be cured by the trial court's immediate admonishment to the jury to disregard the statement."⁶ Our review of the record on appeal reveals that the prosecution did not solicit this statement, and that appellant's counsel specifically requested the district court not give an admonishment to the jury to avoid drawing the jury's attention to the statement. Under these

⁵Id.

⁶Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992) (citing Allen v. State, 91 Nev. 78, 83, 530 P.2d 1195, 1198 (1975)).

circumstances we conclude a mistrial was not required, and the district court did not err in denying this claim.

Fourth, appellant claimed the victim recanted her testimony in an affidavit and this proved appellant's actual innocence. Appellant failed to bring this claim in his direct appeal. The claim is therefore waived absent a showing of good cause and prejudice.⁷ Appellant failed to show either good cause or prejudice. As a separate and independent ground for denying this claim, the claim is belied by the record.⁸ The document appellant referred to is not an affidavit by the victim, it is a police report containing the victim's sister's statement that the victim "indicated that the suspect put his hand over her mouth and had tried to rape her." We conclude this does not constitute a recantation by the victim of her allegation. Accordingly, we conclude the district court did not err in denying this claim.

Fifth, appellant claimed he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were

⁷NRS 34.810(1)(b).

⁸See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

so severe that they rendered the jury's verdict unreliable.⁹ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.¹⁰

Specifically, appellant claimed counsel were ineffective for failing to investigate a previous sexual assault charge against him and one of the witness's relationship with the victims in both cases. Appellant failed to specify what an investigation would have uncovered and how that information would have altered the jury's verdict. Further, appellant was represented by the same counsel in both cases, so it is likely counsel already knew the information appellant claimed counsel should have been seeking through investigation. In addition, it is reasonable to conclude counsel made a tactical decision not to present this argument to the jury because doing so would require disclosure of the previous allegation, which counsel may have feared would be overly prejudicial. Counsel's tactical decisions are "virtually unchallengeable absent extraordinary circumstances."¹¹ Appellant stated no extraordinary circumstances. Accordingly, we conclude the district court did not err in denying this claim.

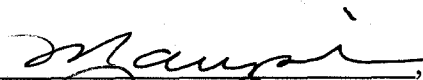
⁹Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

¹⁰Strickland, 466 U.S. at 697.

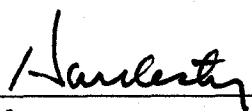
¹¹See Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (quoting Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990)).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Ansell Matria Jordan
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.