

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRANCE K. SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46179

FILED

MAR 28 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On December 30, 2002, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault, three counts of sexual assault with the use of a deadly weapon, and one count each of attempted sexual assault with the use of a deadly weapon, battery with the use of a deadly weapon, battery with intent to commit a crime, and robbery. The district court sentenced appellant to serve terms totaling forty years to life in the Nevada State Prison. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on September 21, 2004.

¹Smith v. State, Docket No. 40780 (Order of Affirmance, August 26, 2004).

On March 7, 2003, before his direct appeal was resolved, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. 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 May 12, 2003, the district court denied appellant's petition on the ground that it was not verified.² This court affirmed the denial of the petition.³

On August 19, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 January 4, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first claimed that his arraignment was unlawfully delayed. We conclude this claim was waived by appellant's failure to raise it on direct appeal, and that appellant failed to demonstrate cause for the failure and actual prejudice.⁴ Accordingly, the district court did not err in denying this claim.

²We note that subsequently this court emphasized in Miles v. State that the district court has the discretion to allow a petitioner to amend a petition for a writ of habeas corpus to cure an inadequate verification. 120 Nev. 383, 91 P.3d 588 (2004).

³Smith v. State, Docket No. 41554 (Order of Affirmance, August 18, 2003).

⁴See NRS 34.810(1)(b).

Second, appellant claimed his pre-sentence investigation report contained errors and he was unable to review the report before he was sentenced. We conclude this claim was waived by appellant's failure to raise it on direct appeal, and that appellant failed to demonstrate cause for the failure and actual prejudice.⁵ As a separate and independent ground for denying relief, our review of the record reveals that the sentencing judge did not rely on the pre-sentence investigation report, instead basing his decision on the nature of the crimes of which appellant was convicted. Accordingly, the district court did not err in denying this claim.

Third, appellant claimed his trial was marred by juror misconduct. This court already ruled in appellant's direct appeal from his conviction that the district court did not err in determining that no prejudice to appellant had resulted from the juror's actions or in denying appellant's motion for a mistrial based on the juror's actions. Once this court rules on the merits of an issue, the ruling is the law of the case and the issue will not be revisited.⁶ Accordingly, the district court did not err in denying this claim.

⁵See id.

⁶Pellegrini v State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).


Fourth, appellant claimed he received ineffective assistance of counsel at sentencing. Appellant failed to state any facts in support of this claim.⁷ Accordingly, the district court did not err in denying this claim.

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.⁸ Accordingly, we

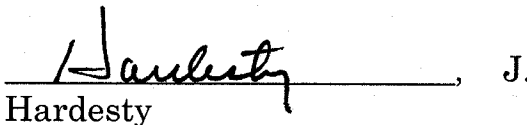
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁷See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner/appellant is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Eighth Judicial District Court Dept. 16, District Judge
Terrance K. Smith
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk