IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS QUEVEDO,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON, MICHAEL BUDGE AND DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, GLEN WHORTON,
Respondents.

No. 46799

FILED

JUN 22 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from the denial of appellant's postconviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Michael R. Griffin, Judge.

On December 30, 1997, the district court, pursuant to a jury verdict, convicted appellant Carlos Quevedo of six counts of sexual assault. Quevedo was sentenced to serve two consecutive and four concurrent terms of ten years to life in prison. This court affirmed the judgment of conviction and sentence on direct appeal.[1] The remittitur issued on September 15, 2000.

Quevedo timely filed a postconviction petition for a writ of habeas corpus. After holding an evidentiary hearing, the district court denied the petition. This appeal followed.

Quevedo first argues that the district court erred in denying his claim that he was actually innocent and was therefore being subjected

[1]Quevedo v. State, Docket No. 31079 (Order Dismissing Appeal, November 18, 1999).

07-13685

to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. "'[A]ctual innocence' means factual innocence, not mere legal insufficiency,"[2] and requires a petitioner to "show that it is more likely than not that no reasonable juror would have convicted him."[3] "To be credible, such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial."[4]

Even assuming this claim is validly raised outside the context of avoidance of procedural bars to untimely or successive habeas petitions,[5] we conclude the district court did not err in rejecting it. At the evidentiary hearing, Quevedo presented an expert witness who testified about perceived improprieties in the investigating detective's interview of the child victim. Quevedo argues that the expert's testimony reveals that the detective's and the victim's testimony about the assaults were not reliable. Merely casting doubt on the credibility of these trial witnesses does not establish that Quevedo is actually innocent of sexual assault of the victim. Quevedo also claims there was no physical evidence of sexual assault, but the sexual assault nurse who performed a physical examination of the victim testified that there was damage to the victim's

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[2]Bousley v. U.S., 523 U.S. 614, 623 (1998) (citing Sawyer v. Whitley, 505 U.S. 333, 339 (1992)).

[3]Bousley, 523 U.S. at 623 (quoting Schlup v. Delo, 513 U.S. 298, 327-28 (1995)).

[4]Schlup, 513 U.S. at 324.

[5]See NRS 34.726; NRS 34.810(3).

hymen consistent with penetration, although she could not say by what. We therefore conclude that the district court did not err in denying this claim.

Second, Quevedo argues that the district court erred by rejecting his argument that his right to confrontation as interpreted in Crawford v. Washington[6] was violated at trial. Quevedo cites Crawford for support of his petition's claims two, three, and four. However, Quevedo's conviction was final when Crawford was decided, and Crawford is not to be applied retroactively to such cases.[7] Accordingly, the district court did not err in denying this claim.

Third, Quevedo argues that the district court erred by ruling that claims two through ten in his original petition were barred by the law of the case doctrine. The doctrine provides that 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.[8]

Claims two, three, and four all related to Quevedo's confrontation rights pursuant to Crawford. Quevedo argues that Crawford constituted an intervening change in law and that we should therefore overlook the law of the case doctrine. However, even if we were to do so, Crawford is not to be applied retroactively[9] and would therefore

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[6]541 U.S. 36 (2004).

[7]Whorton v. Bockting, ___ U.S. ___, 127 S.Ct. 1173 (2007); Ennis v. State, 122 Nev. ___, ___, 137 P.3d 1095, 1098 (2006).

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

[9]Whorton, ___ U.S. ___, 127 S.Ct. 1173; Ennis, 122 Nev. at ___, 137 P.3d at 1098.

not entitle Quevedo to relief. We therefore conclude the district court did not err in rejecting these claims.

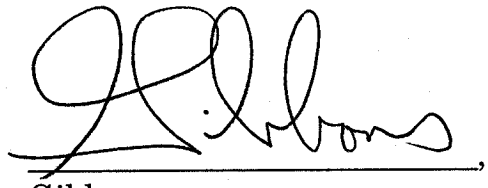
Quevedo concedes that the district court correctly applied the law of the case doctrine to his claims five through eight. We therefore conclude the district court did not err in rejecting these claims.

In claim nine, Quevedo argued that the State violated his rights to due process and a fair trial by playing at trial the videotaped vaginal exam of the victim. This claim was waived by his failure to raise it on direct appeal.[10] We therefore conclude the district court did not err in rejecting this claim.

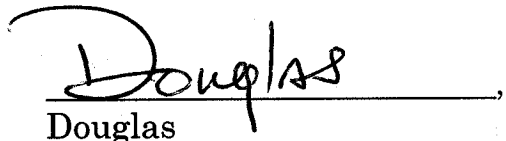
In his brief, Quevedo abandoned claim ten.

Having reviewed Quevedo's contentions are concluded he is not entitled to relief, we

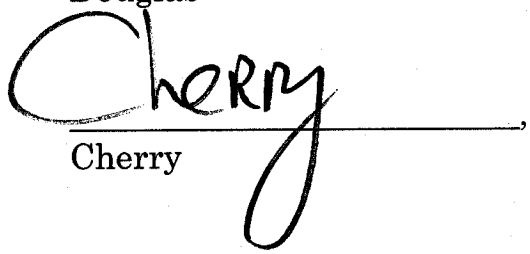
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

[10]See NRS 34.810(1)(b)(2).

cc: First Judicial District Court Dept. 1, District Judge
Glynn B. Cartledge
Attorney General Catherine Cortez Masto/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk