

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY M. STONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48710 **FILED**

FEB 08 2008

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND DIRECTING CORRECTION OF
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying appellant Randy Stone's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On January 28, 2004, the district court convicted Stone, pursuant to a jury verdict, of seven counts of sexual assault of a minor under the age of 14. The district court sentenced him to serve multiple concurrent and consecutive terms totaling life with the possibility of parole after 40 years in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on January 17, 2006.

¹Stone v. State, Docket No. 42738 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, December 20, 2005).

On October 2, 2006, Stone filed a 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 Stone or to conduct an evidentiary hearing. On December 22, 2006, the district court denied the petition. This appeal followed.

In his petition, Stone claimed that he was actually innocent. On direct appeal, this court determined that sufficient evidence supported the jury's verdict. Although Stone asserted his innocence, he failed to identify any new evidence that would undermine the jury's verdict.² Therefore, he failed to demonstrate that he was actually innocent, and we conclude the district court did not err by denying this claim.

Next, Stone claimed that his counsel was ineffective for failing to object to the introduction of bad act evidence and hearsay testimony he challenged on direct appeal. He asserted that had his counsel objected he would not have been convicted. He failed however to demonstrate that objections by his counsel would have altered the outcome of his trial. Moreover, when reviewing these claims on direct appeal, this court determined that he failed to show any prejudice to his substantial rights.

²See Calderon v. Thompson, 523 U.S. 538, 559 (1998) (holding that to demonstrate actual innocence a petitioner must show that "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence" (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995))).

Therefore, we conclude that he failed to demonstrate that his counsel was ineffective³ and the district court did not err by denying this claim.

Stone also claimed (1) there was insufficient evidence to support his conviction; (2) the victim's uncorroborated testimony was insufficient to uphold his convictions; (3) the prosecution engaged in misconduct by introducing bad-character evidence; (4) the prosecution improperly asked the victim leading questions; and (5) the district court abused its discretion when it denied his motion for acquittal or, in the alternative, for a new trial. This court considered and rejected all of these claims in his direct appeal. The doctrine of the law of the case prohibited Stone from reraising these claims.⁴ Therefore, we conclude the district court did not err by denying these claims.

Stone also claimed (1) insufficient evidence was presented at his preliminary hearing to bind him over for trial; (2) the prosecution knowingly used perjured testimony from the victim and failed to correct the testimony; (3) the conflicting evidence presented by the victim's testimony was so imperative to the State's case that her impeachment

³See Strickland v. Washington, 466 U.S. 668, 687, 694 (1984) (holding that to succeed on a claim of ineffective assistance of counsel 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 so severe they rendered the jury's verdict unreliable); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984).

⁴See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

necessitated a different verdict; (4) the district court erred by allowing a prosecution witness to testify that it was her opinion a sexual assault occurred; and (5) his sentence was excessive, disproportionate and constituted cruel and unusual punishment. These claims were appropriate for direct appeal. Stone waived these claims by failing to raise them on direct appeal and by failing to demonstrate good cause for his failure to do so and prejudice.⁵ Therefore, we conclude the district court did not err by denying these claims.

Finally, Stone claimed that his conviction and sentence were invalid due to cumulative error. Stone failed to demonstrate any error; thus, he necessarily failed to demonstrate cumulative error. Therefore, we conclude the district court did not err by denying this claim.


On December 20, 2005, this court affirmed Stone's judgment of conviction and sentence but remanded for the limited purpose of correcting the judgment of conviction. The judgment of conviction incorrectly states that Stone was convicted pursuant to a guilty plea rather than a jury verdict. To date, a corrected judgment of conviction has not been entered. Accordingly, we again direct the district court to enter a corrected judgment of conviction.⁶


⁵See NRS 34.810(1)(b)(2), (3).

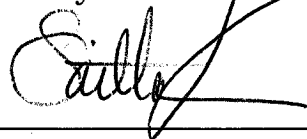
⁶See NRS 176.565.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that Stone 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 he 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.

cc: Hon. Jackie Glass, District Judge
Randy M. Stone
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk