

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVEN OLAUSEN,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 48809

FILED

JUN 22 2007

VANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On December 14, 1979, the district court convicted appellant, pursuant to a guilty plea, of first-degree murder, robbery with the use of a deadly weapon, and kidnapping with the use of a deadly weapon. A three-judge panel sentenced appellant to death for first-degree murder. The district court sentenced appellant to two consecutive terms of life without the possibility of parole for kidnapping with the use of a deadly weapon, to run concurrent with the sentence for first-degree murder, plus two consecutive terms of fifteen years for robbery with the use of a deadly weapon, to run consecutively to all other sentences. This court affirmed the judgment of conviction and sentence on direct appeal.¹ In 1989, this court granted appellant post-conviction relief based on ineffective

¹Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983), aff'd on rehearing, 101 Nev. 452, 705 P.2d 151 (1985) ("Wilson I"). Edward Thomas Wilson was one of appellant's co-defendants.

assistance of trial counsel at sentencing; his sentence of death was vacated and the case was remanded to the district court for another penalty hearing.² Upon remand, a three-judge panel sentenced appellant to life in prison without the possibility of parole for first-degree murder.

On September 5, 2006, appellant filed a petition for a writ of habeas corpus. The State filed a response to the petition, a motion to dismiss the petition, and an amended response to the petition. Appellant filed a reply to the State's filings. 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 3, 2007, the district court granted the State's motion and denied the petition. This appeal followed.

In his petition, appellant claimed that he was being held in prison without a valid judgment of conviction. Appellant asserted that in Wilson II this court vacated or acquitted him of his first-degree murder conviction, and the district court never entered a new judgment of conviction for first-degree murder. Appellant therefore argued that he was being unlawfully restrained or imprisoned.

Our review of the record on appeal reveals that appellant's claim is belied by the record.³ As noted above, in Wilson II this court vacated appellant's death sentence, but did not vacate or reverse his conviction for first-degree murder. On December 7, 1989, pursuant to this court's order of remand in Wilson II, a three-judge panel entered

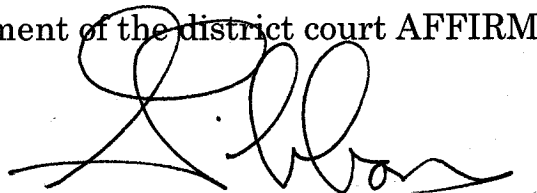
²Wilson v. State, 105 Nev. 110, 117, 771 P.2d 583, 587 (1989) ("Wilson II").

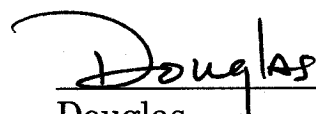
³See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

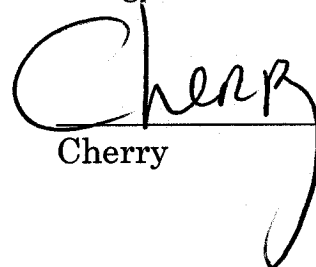
"Findings, Determinations and Imposition of Sentence," in which the panel retained the original sentences imposed for robbery with the use of a deadly weapon and kidnapping with the use of a deadly weapon, and changed the sentence for first-degree murder from death to life without the possibility of parole. This order substantially complied with NRS 176.105 and, therefore, operated as an amended judgment of conviction. Appellant failed to demonstrate that he was being illegally detained. Accordingly, we conclude the district court did not err in denying appellant's petition.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Steve L. Dobrescu, District Judge
John Steven Olausen
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk