

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLAN CLARK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49985

**FILED**

MAR 04 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion "for mistrial and/or acquittal and motion for new trial." Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On February 2, 2007, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault of a minor under the age of 16, two counts of statutory sexual seduction, and one count of preventing or dissuading a witness from testifying. The district court sentenced appellant to serve two concurrent life sentences in the Nevada State Prison with the possibility of parole for the sexual assault counts and a concurrent sentence of 12 months for the preventing or dissuading count.<sup>1</sup> The district court ordered the statutory sexual seduction counts stricken because they were alternative counts to the two sexual assault

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<sup>1</sup>On August 13, 2007, the district court amended the judgment of conviction and sentenced appellant to serve two consecutive life sentences with the possibility of parole in the Nevada State Prison for the sexual assault counts.

counts. This court affirmed the judgment of conviction on appeal. Clark v. State, Docket No. 48647 (Order of Affirmance, January 30, 2009).

On January 13, 2007, appellant filed a “motion for the court to: allow jury sentencing, hear motion for mistrial, and dismiss counts 3 and 4 due to unconstitutional statutes amongst other issues.” The State opposed this motion. On July 23, 2007, appellant filed a response to the State’s opposition.

On January 19, 2007, appellant filed a “motion for mistrial and/or acquittal and new trial date setting with self-representation.” The State opposed this motion. On July 23, 2007, appellant filed a response to the State’s opposition.

On June 11, 2007, appellant filed a “notice to court, district attorney, counsel/standby counsel of record and omnibus motion for relief” and a “motion ex parte to reassemble jury to correct error in form of verdict.”

On August 15, 2007, and September 27, 2007, the district court entered orders denying appellant’s motions “for court to reassemble jury and defendant’s pro per motion for due process ex parte hearing,” and “defendant’s motion for the court to allow jury sentencing, motion for mistrial and/or acquittal, and motion for new trial, and defendant’s omnibus motion for relief.” This appeal followed.<sup>2</sup>

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<sup>2</sup>To the extent that appellant is appealing the district court’s denial of his motions “for court to reassemble jury” and “for due process ex parte hearing” and his motion for “omnibus relief,” we conclude that the district court did not abuse its discretion in denying these motions.


In his motion for new trial, appellant claimed that he was entitled to a new trial because (1) the district court erred by denying appellant's right to self-representation; (2) his statement that he was attracted to the victim and his criminal history should have been suppressed; (3) he should have been allowed to use his final peremptory challenge on juror nine because by leaving him on the jury, he was forced to testify; (4) the district court should have required more proof that Peggy Morris was incompetent than a doctor's note, or in the alternative, appellant should have been allowed to read her affidavit to the jury; and (5) he was improperly convicted of both counts 1 and 2 and counts 3 and 4, which encompassed the same conduct, and a consensual sexual act was not alleged.

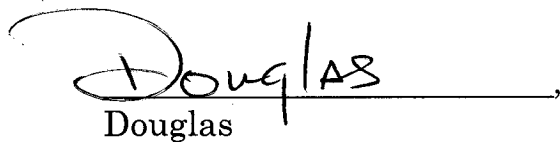
A motion for a new trial made on any grounds other than newly discovered evidence must be made within seven days after the jury's verdict. See NRS 176.515(4). The jury verdict was handed down on December 7, 2006. Appellant submitted a proper person "motion for mistrial and/or acquittal and new trial date setting with self-representation" which was received by the clerk's office on December 20, 2006. This motion was not filed because appellant was represented by counsel and was not allowed to file documents in proper person. On January 19, 2007, trial counsel caused appellant's motion to be filed in the district court. Appellant's motion was not based upon newly discovered evidence and was not filed within seven days after the jury's verdict. See

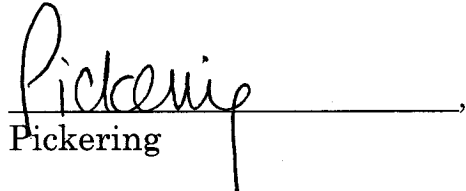
Callier v. Warden, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995). Therefore, the district court did not err in denying appellant's motion.<sup>3</sup>

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Michael Allan Clark  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>3</sup>Any claims relating to counsel's assistance in regards to the filing of these motions must be raised in a timely post conviction petition for a writ of habeas corpus.