


IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO RAMON HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52100

FILED

JAN 26 2009

FRANCIS K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Francisco Ramon Herrera's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

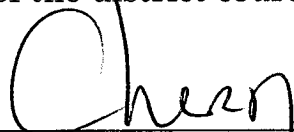
On January 3, 2006, the district court convicted Herrera, pursuant to his pleas of no contest and guilty, of one count of attempted sexual assault on a child and one count of attempted sexual assault. The district court sentenced Herrera to serve two consecutive prison terms of 60 to 220 months. On direct appeal, we rejected Herrera's contentions that his sentences constituted cruel and unusual punishment and that the district court abused its discretion by imposing the sentences to run consecutively. Herrera v. State, Docket No. 46584 (Order of Affirmance, May 26, 2006).


On June 8, 2007, Herrera filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Herrera; counsel did not file a supplement to Herrera's petition. The State filed a motion to dismiss the petition. The district court granted the State's motion after determining that an evidentiary

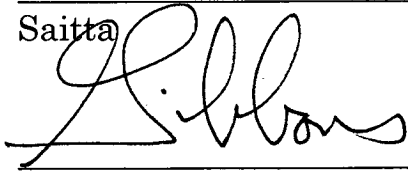
hearing was unnecessary because Herrera's first claim was belied by the record, his second claim was not supported with specific factual allegations, and his third claim had been rejected by this court on direct appeal. This appeal followed.

Herrera contends that the district court abused its discretion by dismissing his habeas petition. Herrera claims that the district court erred by determining that the law of the case doctrine prohibited him from again challenging the harshness and reasonableness of his sentences in a habeas corpus petition. However, Herrera's claim was properly denied because it is outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). As a separate and independent ground for denying relief, the district court correctly determined that our rejection of this claim on direct appeal barred further litigation of this issue in this case. See Lader v. Warden, 121 Nev. 682, 690-91, 120 P.3d 1164, 1169 (2005). Having concluded that Herrera is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk