

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN FEE BREWSTER,

No. 36419

Appellant,

vs.

FILED

WARDEN, LOVELOCK CORRECTIONAL
CENTER, JACKIE CRAWFORD,

OCT 11 2000

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

Appellant was convicted, pursuant to a jury verdict, of two counts of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve two consecutive prison terms of 24-72 months. Appellant was given credit for 93 days time served. This court dismissed appellant's direct appeal of his conviction. *Brewster v. State*, Docket No. 30699 (Order Dismissing Appeal, August 10, 1998).

On June 2, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss appellant's habeas petition. Pursuant to NRS 34.750, the district court appointed counsel to represent appellant and counsel filed a supplemental petition; and, pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On June 19, 2000, the district court dismissed appellant's petition. This appeal followed.

Appellant contends the district court erred at sentencing in admitting evidence of appellant's prior bad acts. More specifically, appellant argues that (1) the prosecution did not provide the required notice to the defense that a victim impact statement would include allegations of appellant's prior drug use; and (2) the district court erred by stating that appellant "opened the door" for the admission of the evidence.

Our review of the record on appeal reveals that appellant failed to raise this issue in his direct appeal and therefore waived the claim. See NRS 34.810(1)(b)(2); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).¹

Having considered appellant's contention and concluded that it was not properly raised in a post-conviction

¹Even if appellant properly raised this issue by arguing that he received ineffective assistance of counsel (1) at sentencing by counsel's failure to ask for a continuance, or (2) on direct appeal by counsel's failure to raise the issue, we conclude that appellant would not be entitled to relief. See Strickland v. Washington, 466 U.S. 668 (1984) (to establish ineffective assistance of counsel, a defendant must show that counsel's representation fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense). In neither his habeas petitions nor in his fast track statement has appellant claimed that the granting of a continuance at sentencing would have led to additional evidence sufficient to rebut the allegations made in the victim impact statement. We conclude, therefore, that appellant's contention is bare and naked, and unsupported by specific factual allegations. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Furthermore, our review of the sentencing hearing transcript reveals that the district court did not rely upon the evidence in question in sentencing appellant; and therefore we conclude that appellant has not demonstrated that he was prejudiced by its admission. See Strickland, 466 U.S. 668.

petition for a writ of habeas corpus, the order of the district court dismissing appellant's habeas petition is affirmed.

It is so ORDERED.²

Maupin, J.
Maupin

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.