IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN H. ROSKY,
Petitioner,
vs.
RENEE BAKER, WARDEN; AND CHRISTOPHER J. HICKS, WASHOE COUNTY DISTRICT ATTORNEY,
Respondents.

No. 75209

ORDER DENYING PETITION

In this original petition for a writ of habeas corpus, John H. Rosky claims he is being illegally restrained because his conviction for sexual assault of a minor under the age of fourteen was obtained in violation of the Double Jeopardy Clause.

We conclude extraordinary relief is not warranted. Contrary to Rosky's assertion, the Nevada Supreme Court did not reverse Rosky's original conviction for sexual assault after finding there was insufficient evidence to support this conviction. Rather, the Nevada Supreme Court reversed Rosky's original conviction for sexual assault after finding the erroneous admission of a prior bad act was not harmless beyond a reasonable doubt because overwhelming evidence did not support the conviction. *Rosky v. State*, 121 Nev. 184, 198, 111 P.3d 690, 699 (2005). This reversal was not an acquittal because the Nevada Supreme Court did not base the reversal on a resolution of any of the factual elements of the offense of sexual assault. *See United States v. Martin Linen Supply Company*, 430 U.S. 564, 571 (1977). Therefore, the State was not precluded by the Double Jeopardy Clause from retrying Rosky. Accordingly, we

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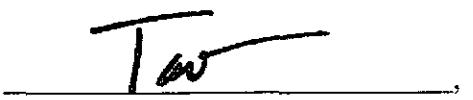
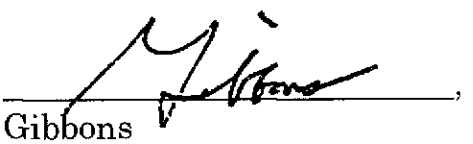
conclude Rosky has not demonstrated he is being illegally restrained, and we

ORDER the petition DENIED.[1]


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: John H. Rosky
Attorney General/Carson City
Washoe District Court Clerk

[1]In light of this order, we deny Rosky's motion requesting counsel.