

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT ANTHONY MONROE AND  
MICHAEL JOHN STONE,  
Appellants,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39695

FILED

FEB 24 2003

ORDER OF AFFIRMANCE

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

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

On September 30, 1999, the district court convicted appellant, Dwight Monroe, pursuant to a guilty plea, of three counts of burglary. The district court sentenced Monroe to serve three consecutive terms of forty-eight to one hundred and twenty months in the Nevada State Prison. This court dismissed Monroe's direct appeal.<sup>1</sup>

On September 30, 1999, the district court convicted appellant, Michael Stone, pursuant to a guilty plea, of two counts of burglary. The district court sentenced Stone to serve two consecutive terms of thirty-six to one hundred and twenty months in the Nevada State Prison. This court affirmed Stone's conviction on direct appeal.<sup>2</sup>

---

<sup>1</sup>Monroe v. State, Docket No. 34993 (Order Dismissing Appeal, June 13, 2000).

<sup>2</sup>Stone v. State, Docket No. 34938 (Order of Affirmance, November 20, 2000).

On June 4, 2001, Monroe and Stone filed a proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>3</sup> The State filed a motion to dismiss the petition. Appellants filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellants or to conduct an evidentiary hearing. On April 22, 2002, the district court granted the State's motion and dismissed appellants' petition. This appeal followed.

In the petition, appellants contended that NRS 205.060 (the burglary statute), on its face and as applied, is unconstitutional. Appellants reasoned that NRS 205.060 is unconstitutional because it punishes a state of mind, and a state of mind is a matter of conscience, and matters of conscience are protected by the First Amendment. They argue that to punish a person for his thoughts when he enters a building open to the public runs afoul of 42 U.S.C. §2000a-2 (civil rights act). Therefore, they argued that their guilty pleas were not knowingly entered, and appellate counsel were ineffective for failing to raise, or properly raise, this issue on direct appeal. We conclude that the district court did not err in determining that these claims lacked merit.

As to appellant Stone, this court previously considered and rejected on direct appeal Stone's challenge to the constitutionality of NRS 205.060.<sup>4</sup> Although Stone attempted to reformulate his argument, this

---

<sup>3</sup>The petition filed by Monroe and Stone contains information pertaining to both appellants and is signed and verified by both appellants.

<sup>4</sup>Specifically, this court concluded, "NRS 205.060 is not unconstitutional. The statute does not prohibit appellant from entering a  
*continued on next page . . .*

court has fully considered the issue of the constitutionality of the burglary statute. The doctrine of the law of the case prevents relitigation of this issue and cannot be avoided by a more detailed and precisely focused argument.<sup>5</sup> Moreover, appellant failed to demonstrate that his plea was invalid or that his appellate counsel was ineffective.<sup>6</sup> Therefore, the district court did not err in denying Stone's claim for relief.

As to appellant Monroe, Monroe waived this claim because he failed to raise it on direct appeal.<sup>7</sup> Moreover, Monroe failed to demonstrate that his plea was invalid or that his appellate counsel was ineffective.<sup>8</sup> Therefore, the district court did not err in denying Monroe's claim for relief.

---

*. . . continued*

commercial establishment. Rather, it prohibits appellant from entering such an establishment with the intent to commit a felony. Such criminal conduct is not constitutionally protected." Stone v. State, Docket No. 34938 (Order of Affirmance, November 20, 2000).

<sup>5</sup>Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

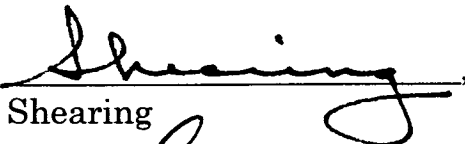
<sup>6</sup>Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

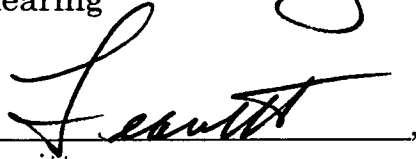
<sup>7</sup>Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

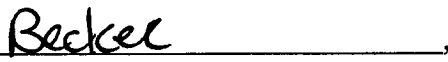
<sup>8</sup>Kirksey, 112 Nev. 980, 923 P.2d 1102; Bryant, 102 Nev. 268, 721 P.2d 364.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Jerome Polaha, District Judge  
Dwight Anthony Monroe  
Michael John Stone  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>9</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.