

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP A. PITTENGER,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41846

FILED

MAR 11 2004

JANE L. STONE
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DENYING PETITION

This proper person petition for extraordinary relief seeks an order of this court resolving constitutional claims relating to petitioner's February 13, 1997, criminal conviction, pursuant to a guilty plea, of one count of sexual assault of a child under the age of sixteen and one count of using minors in the production of pornography or as the subject of sexual portrayal. Petitioner was sentenced to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years and a concurrent term of fifteen years with the possibility of parole after five years.

In July 1999, this court dismissed petitioner's direct appeal from his judgment of conviction and sentence¹. Petitioner then filed a timely post-conviction petition for a writ of habeas corpus in the district court. Following an evidentiary hearing, the district court denied the petition. This court subsequently affirmed the district court's decision.²

Thereafter, petitioner apparently sought federal habeas relief. In the instant petition, petitioner alleges, without any supporting


¹Pittenger v. State, Docket No. 30315 (Order Dismissing Appeal, July 6, 1999).


²Pittenger v. State, Docket No. 37101 (Order of Affirmance, February 14, 2002).

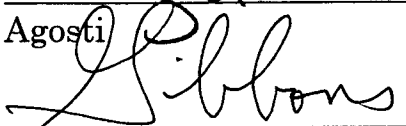
documentation, that the federal court has ruled that his claims remain unexhausted in the state courts for the purposes of federal habeas review because they were not presented to the state courts in a manner that made explicit the federal constitutional nature of the claims. Accordingly, petitioner requests this court to consider and explicitly rule upon the constitutional claims presented in the instant petition.

This court will not consider such post-conviction claims collaterally attacking a conviction in the first instance. Petitioner's remedy, if any, is to first file a state post-conviction petition for a writ of habeas corpus in the Nevada district court in accordance with the statutory scheme set forth in NRS chapter 34. Such a petition must demonstrate either good cause and prejudice or a fundamental miscarriage of justice sufficient to overcome the procedural bars to a successive and untimely petition.³ Petitioner may then appeal any adverse decision of the district court to this court.⁴ Accordingly, having concluded that this court's intervention by way of extraordinary writ is not warranted, we hereby

ORDER the petition DENIED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

³See NRS 34.726(1); NRS 34.745(4); NRS 34.800; NRS 34.810; see also Pellegini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001).

⁴See NRS 34.575(1).

cc: Phillip A. Pittenger
Attorney General Brian Sandoval/Ely