

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LAMAR BROWN,  
Petitioner,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42705

**FILED**

APR 08 2004

ORDER DENYING PETITION

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

This is a proper person petition for extraordinary relief.<sup>1</sup> Petitioner seeks clarification of a prior order of this court.

On December 2, 1996, petitioner was convicted, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon. The district court sentenced petitioner to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole for the murder count, and two consecutive terms of 48 to 240 months for the attempted murder count. The district court imposed the terms for the murder count to run consecutive to the terms for the attempted murder count. This court dismissed petitioner's conviction on direct appeal.<sup>2</sup>

---

<sup>1</sup>On January 27, 2004, this court received a proper person motion to proceed in forma pauperis.

<sup>2</sup>Brown v. State, Docket No. 29803 (Order Dismissing Appeal, July 16, 1999).

Petitioner filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. Petitioner also filed a supplement to the petition. It appears that petitioner raised eighteen claims in the petition. The district court appointed counsel to represent petitioner in the post-conviction proceedings. The district court considered only three claims in depth at the evidentiary hearing; the remainder were apparently abandoned by post-conviction counsel. On appeal, this court adopted the district court's order and affirmed the district court's order for the reasons stated therein.<sup>3</sup>

Brown, it appears, next filed a federal habeas corpus petition. The United States District Court concluded that for exhaustion purposes this court's March 28, 2002 order of affirmance was ambiguous as to the claims considered and decided by this court. Specifically, the United States District Court noted that this court's order "speaks in the plural of 'claims of ineffective assistance of counsel,'" even though petitioner's post-conviction counsel did not raise a claim of ineffective assistance of counsel on appeal and only one of the claims in the district court's order related to ineffective assistance of counsel. The United States District Court further noted that the only documents that contain multiple claims of ineffective assistance of counsel are proper person documents filed by petitioner in the district court. Citing to another ambiguity, the United States District Court noted that footnote 3 of the order stated that this court considered

---

<sup>3</sup>Brown v. State, Docket No. 37981 (Order of Affirmance, March 28, 2002).

"all the proper person documents filed or received in this matter." The United States District Court concluded that claims 1, 2, 7-16, and 18, as raised in the federal habeas corpus petition, had not been exhausted and directed petitioner to return to state court to exhaust these claims.

Notwithstanding any contrary language in the March 28, 2002 order of affirmance, this court considered only those claims specifically addressed in the order of the district court adopted by this court.<sup>4</sup> Footnote 3 did not refer to the proper person documents filed in the district court, but rather, footnote 3 referred to the numerous proper person documents that petitioner attempted to file in this court.<sup>5</sup> Because petitioner was represented by counsel, this court determined that the relief requested in the proper person documents received in this court was not warranted. Any claims raised in the habeas corpus petition that were abandoned at the evidentiary hearing and not raised on appeal were not considered by this court. Because Brown's only remedy to exhaust the

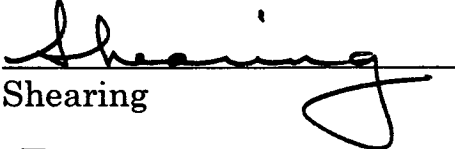
---

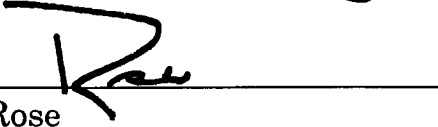
<sup>4</sup>The district court's order addressed: (1) a challenge to restitution; (2) a claim that trial counsel was ineffective for failing to seek dismissal of the larceny charge; and (3) a claim that the district court erroneously rejected petitioner's proffered self-defense jury instruction.

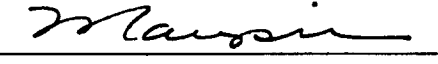
<sup>5</sup>These documents included: (1) November 20, 2001 motion for reconsideration; (2) November 20, 2001 letter; (3) November 20, 2001 request for permission to proceed in forma pauperis; (4) November 20, 2001 affidavit; and (5) November 20, 2001 motion for termination of counsel.

remainder of his claims is to begin the habeas corpus process anew in the district court,<sup>6</sup> we

ORDER the petition DENIED.

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

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Connie J. Steinheimer, District Judge  
Brian Lamar Brown  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

---

<sup>6</sup>We express no opinion as whether petitioner will be able to satisfy the procedural requirements of NRS chapter 34.