

Case No. 85803

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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JESSE D. NOBLE, JR.,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

On Appeal from the Eighth Judicial District Court of the State of Nevada
Case No. C-18-336940-1

RESPONDENT'S AMENDED ANSWERING BRIEF

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JURISDICTIONAL STATEMENT

The Nevada Supreme Court and Nevada Court of Appeals have jurisdiction pursuant to Nev. Const. art. 6, § 4(1) and NRS 1.030. Appellant Jesse D. Noble, Jr. originally filed an untimely motion for new trial in the Eighth Judicial District Court on November 18, 2019. Appellant's Appendix (AA) I-AA-38-42. The state district court treated the motion as a petition for writ of habeas corpus. I-AA-90. Noble filed a counseled supplemental petition. I-AA-45-63. The state district court correctly denied Noble's petition. I-AA-90-91. Noble filed a Notice of Appeal. I-AA-95. On July 8, 2022, the Court partially affirmed and partially reversed and remanded for an evidentiary hearing. I-AA-98-101. On December 5, 2022, following an evidentiary hearing, the state district court issued a final Decision and Order correctly denying Noble's single remanded claim again. I-AA-103-05. On November 21, 2022, Noble again filed a Notice of Appeal. I-AA-109.

STATEMENT OF THE ISSUES

1. Whether Noble's insufficiency of the evidence claim is barred/waived when he failed to raise this claim below or on direct appeal?
2. Whether Noble's insufficiency of the evidence claim lacks merit when the record indicates sufficient evidence supports his conviction?

STATEMENT OF THE CASE

The State charged Noble with Battery by a Prisoner, a category B felony, in

what became Eighth Judicial Court Case No. C-18-336940-1. I-AA-6-7; I-AA-37a. Noble proceeded to trial, where a jury found him guilty of the charge. *See* I-AA-43. The state district court sentenced Noble to incarceration for a maximum of seventy-two months, with a minimum parole eligibility of twenty-eight months, to run consecutively to his active sentences from Eighth Judicial Case No. C312733. *See id.* at 43-44.

The court entered Noble's Judgment of Conviction on April 11, 2019. I-AA-43-4. Five months later, on November 18, 2019, Noble filed a notice of appeal in Nevada Supreme Court Case No. 79739. *See* I-AA-67. The Nevada Supreme Court dismissed the appeal as untimely. *See id.*

On November 18, 2019, Noble filed an untimely motion for a new trial. I-AA-38-42. The state district court construed the motion as a petition for writ of habeas corpus. *See* I-AA-90. After the court appointed counsel, Noble filed a counseled supplemental petition. I-AA-45-59. In his petition and supplemental petition, Noble solely alleged claims of ineffective assistance of counsel. *See* I-AA-38-42; I-AA-45-59.

On May 17, 2021, the state district court properly denied Noble's petition without an evidentiary hearing. I-AA-90-91. Noble timely filed a notice of appeal. I-AA-95. On appeal, this Court affirmed the state district court's dismissal of two of Noble's claims. I-AA-98-102. This Court determined the state district court erred in

dismissing Noble's third claim without an evidentiary hearing and reversed and remanded to state district court for the sole purpose of holding an evidentiary hearing regarding Noble's third claim of ineffective assistance of counsel. *See id.*

On November 10, 2022, the state district court held an evidentiary hearing. I-AA-103. On December 5, 2022, the court issued again properly denied Noble's single remanded claim. I-AA-103-05. Noble timely filed a Notice of Appeal. I-AA-109. This brief now follows.

STATEMENT OF FACTS

On December 21, 2017, while Noble was incarcerated at High Desert State Prison for crimes unrelated to the instant matter, an altercation between two other inmates occurred. *See* I-AA-104. When officers attempted to take control of the situation and ordered all uninvolved inmates to lay on their stomachs, Noble refused to comply. *See* I-AA-66. Correctional Officer Waylon Brown ordered Noble to comply five or six times. *See id.* Noble refused each time and after the fifth or sixth time told Officer Brown, "[F]uck you, why don't you make me." *See id.* Officer Brown attempted to restrain Noble by his wrist. *See id.* Noble then punched Officer Brown multiple times in the face, causing Officer Brown to briefly black out. *See id.; see also* I-AA-17-18.

During a photo lineup, Officer Brown positively identified Noble as the inmate who battered him. *See* I-AA-17. Several officers who witnessed the attack

also identified Noble as the inmate who battered Officer Brown. *See* I-AA-17-18. Two other witnesses also confirmed Noble battered Officer Brown. *See* I-AA-18. Photos and medical records of Officer Brown’s injuries were also consistent with the witness accounts. *See id.* A video taken in the aftermath captured Noble spontaneously saying, “The dude hit me first.” *See* I-AA-104.

SUMMARY OF THE ARGUMENT

Noble’s sole claim of insufficiency of evidence must be denied for three reasons. First, Noble failed to raise his claim in state habeas proceedings below – as such, his claim is presented for the first time on appeal and is therefore waived/barred. Second, Noble failed to raise his claim on direct appeal. For this additional reason, his claim is waived/barred. Finally, even if Noble’s claim was appropriate at this time, it is wholly belied by the record.

STANDARD OF REVIEW

This Court gives deference to factual findings of the district court, but reviews *de novo* the application of law in the denial of a petition for writ of habeas corpus. *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

ARGUMENT

I. NOBLE’S INSUFFICIENT EVIDENCE CLAIM IS BARRED BECAUSE HE FAILED TO RAISE IT IN PRIOR PROCEEDINGS.

In his Opening Brief, Noble raises a single brand-new claim of insufficiency of the evidence. Noble is prohibited from raising such a claim at this stage.

A. Noble Failed to Raise His Claim Below.

Noble did not raise his claim in the state habeas proceedings below. Specifically, Noble failed to present an insufficiency of the evidence claim at any point in his motion for new trial/initial state habeas petition, his supplemental petition, or even his briefing on previous appeal to this Court. *See* I-AA-38-42; I-AA-45-59; Nevada Supreme Court Case No. 83024. Noble cannot raise this claim now for the first time during his second round of appeals. *Bonnenfant v. State*, 86 Nev. 393, 469 P.2d 401 (1970); *Gebert v. State*, 85 Nev. 331, 454 P.2d 897 (1969); *Mears v. State*, 83 Nev. 3, 422 P.2d 230 (1967). As such, there is nothing this Court may properly consider. *See, e.g., Dolores v. State, Employment Sec. Div.*, 134 Nev. 258, 261 (2018) (“Issues not argued below are ‘deemed to have been waived and will not be considered on appeal.’”). The Court should reject Noble’s claim for this reason alone.

B. Noble Failed to Raise His Claim on Direct Appeal.

Moreover, Noble did not present this claim during direct appeal proceedings. Nevada law requires courts to dismiss a state habeas petition if “[t]he petitioner’s conviction was the result of a trial,” and the court determines the petitioner’s claims “could have been . . . [r]aised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.” *See* NRS 34.810(1). Additionally, this Court has held that “challenges to the validity of a guilty plea and claims of ineffective

assistance of trial and appellate counsel must first be pursued in post-conviction proceedings. . . . [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or *they will be considered waived in subsequent proceedings.*” *Franklin v. State*, 110 Nev. 750, 752 (1994) (emphasis added) (disapproved on other grounds by *Thomas v. State*, 115 Nev. 148 (1999)).

Here, Noble improperly attempts to argue that the prosecution presented insufficient evidence at his trial to convict him. This claim could and should have been raised during direct appeal, which he failed to do. While Noble originally presented ineffective assistance of counsel claims below in his motion for new trial/petition for writ of habeas corpus, his sole new claim is no longer an ineffective assistance claim. As such, Noble cannot assert it now, and for this additional reason the Court must reject his claim.

II. Noble’s Insufficiency of the Evidence Claim Lacks Merit Because Sufficient Evidence Supports the Jury’s Finding of Guilt.

Even if Noble’s claim were permissible in these proceedings, his argument still fails because sufficient evidence exists to support his conviction at trial. The standard of review for sufficiency of the evidence upon appeal is whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. *Edwards v. State*, 90 Nev. 255, 258-59 (1974). The relevant inquiry is “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the

crime beyond a reasonable doubt.” *Origel-Candido v. State*, 114 Nev. 378, 381 (1998) (quoting *Koza v. State*, 100 Nev. 245, 250 (1984)). Juries may reasonably rely upon circumstantial evidence. *Wilkins v. State*, 96 Nev. 367, 374 (1980). Indeed, circumstantial evidence alone may sustain a conviction. *See Deveroux v. State*, 96 Nev. 388, 391 (1980) (citing *Crawford v. State*, 92 Nev. 456, 552 P.2d 1378 (1976)). Moreover, “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.” *Origel-Candido*, 114 Nev. at 381 (quoting *McNair v. State*, 108 Nev. 53, 56 (1992); *see also Azbill v. Stet*, 88 Nev. 240, 252 (1972) (specifying that the weight and sufficiency of the evidence in criminal proceedings are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an appellate court), cert. denied, 429 U.S. 895 (1976)).

Here, an amplitude of evidence confirmed Noble attacked Officer Brown. Indeed, Officer Brown specifically identified Noble as the inmate who battered him and testified to such at trial. *See* I-AA-17; I-AA-91; I-AA-99-100. Several officers who witnessed the attack also identified Noble as the inmate who battered Officer Brown. *See* I-AA-17-18. Two other witnesses also confirmed Noble battered Officer Brown. *See* I-AA-18. Photos and medical records of Officer Brown’s injuries were also consistent with the witness accounts. *See id.* Noble’s argument is wholly belied by the record, and for this additional reason this Court should reject his claim.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the denial of Noble's petition for writ of habeas corpus.

Respectfully submitted this 11th day of August, 2023.

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By: /s/ Jaimie Stilz
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, 14 pt. Times New Roman type style.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11th day of August, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on August 15, 2023.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

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