

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOHN TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43948

FILED

MAY 17 2005

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying appellant Michael John Taylor's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 30, 2003, the district court convicted Taylor, pursuant to a guilty plea, of three counts of attempted lewdness with a minor under the age of 14 (counts 1, 2, and 3) and three counts of possession of visual presentation depicting sexual conduct of a person under 16 years of age (counts 4, 5, and 6). The district court sentenced Taylor to serve a term of 2 to 5 years in the Nevada State Prison for each of the attempted lewdness counts and a term of 1 to 3 years for each of the remaining counts. The district court ordered count 2 to run consecutively to count 1 and count 3 to run concurrently with count 2. The district court further ordered count 4 to run consecutively to counts 1, 2, and 3, and counts 5 and 6 to run concurrently. No direct appeal was taken.

On April 10, 2004, Taylor filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Taylor or to conduct an

evidentiary hearing. On September 8, 2004, the district court denied Taylor's petition. This appeal followed.

In his petition, Taylor claimed, among other matters, that his plea was involuntary because the State breached the plea agreement by arguing for a harsher sentence than that to which the State had agreed to argue. Specifically, he contended that the State agreed to argue for no more than five years imprisonment, as reflected by the following language in the written plea agreement:

Both parties will retain the right to argue what the prison sentence will be for each count, including whether the counts will run consecutively or concurrently with one another. *Further, the State agrees not to ask for more than Five (5) years prison time.* (Emphasis added).

Taylor argued that the State breached the plea agreement by recommending a term of confinement greater than five years.

We conclude that the language in the plea agreement is ambiguous. In addition, the following colloquy during sentencing further obscures the intent of the parties respecting the plea agreement:

Trial counsel: There was he was concerned and I'm concerned that the plea agreement that came over when pretrial or Parole and Probation came over, had written a five years as a minimum. Actually, the five years was a negotiated thing. Whether it's going to be a minimum or a maximum was open to this Court.

But the fact is, this does not justify five years on the low end. It simply doesn't. Look at the mitigating factors. . . . I would ask this Court then to sentence Mike to on Count One, Two, and Three twenty-four months to ninety-six months. And for those three counts to run concurrent with each other.

...

On Counts Four, Five, and Six, that's twelve months to thirty-six months to run concurrent with each other. So Count One, Two, and Three concurrent twenty-four to ninety-six.

Count Four, Five, and Six concurrent twelve to ninety-six [sic] and the Four, Five, and Six run consecutive to Count One, Two, and Three.

That provides him with three years in prison before he's even eligible for parole.

The Court: That's

Trial counsel : And, your Honor --

The Court: That's not my understanding of the negotiation.

Trial counsel: No, the negotiation was not binding on the five years.

Prosecutor: Just that I would not ask for, you know, more.

Trial counsel: Would not ask for more than --

Prosecutor: But I am -- I would not ask for more than five years.

Trial counsel: That's the negotiation.

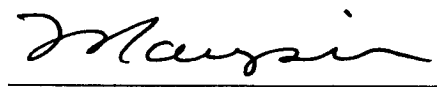
Prosecutor: It was not binding. We never agreed to five years.

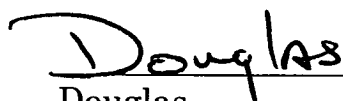
Trial counsel: You need to understand that, your Honor. So that's what we would ask One, Two, and Three run concurrent. The twenty-four to ninety-six with each other. Four, Five, and Six run concurrent with each other.

And Four, Five, and Six run consecutive to One, Two, and Three making a low end of three years, and a high end of ninety-six months or eight years.

A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea.¹ Taylor's claim that he understood the plea agreement to prohibit the State from recommending more than five years confinement is not belied by the record, and therefore, he was entitled to an evidentiary hearing on this issue.² Accordingly, we reverse the district court's order and remand this case for an evidentiary hearing on the sole issue of whether Taylor understood his plea agreement to prohibit the State from arguing for a minimum sentence in excess of five years confinement, or whether he reasonably understood his plea agreement to preclude the State from recommending a sentence of more than five years. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

¹See Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

²See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

cc: Hon. John S. McGroarty, District Judge
Michael John Taylor
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk