

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN RAY MATHIESEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44261

FILED

APR 19 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

Appellant was originally convicted, pursuant to guilty pleas, of two counts of possession of stolen property and one count of burglary. The district court sentenced appellant to three consecutive prison terms of 48-120 months and ordered him to pay restitution in the amount of \$1,711.27. On direct appeal, this court affirmed the judgments of conviction.<sup>1</sup>

On October 30, 2003, appellant filed a proper person petition for a writ of habeas corpus, alleging ineffective assistance of counsel at sentencing and on direct appeal. Specifically, appellant argued that the district court improperly considered letters and testimony from victims of charges to which appellant had not pleaded guilty. Appellant further argued that trial counsel should have objected and appellate counsel should have raised the issue on appeal.

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<sup>1</sup>Mathiesen v. State, Docket Nos. 40456 and 40457 (Order of Affirmance, January 24, 2003).

Appellant also argued that prosecutorial misconduct warranted a new sentencing hearing. In particular, appellant claimed that the prosecutor improperly offered the testimony of the victims at sentencing.

The district court appointed post-conviction counsel, who filed a supplement to the petition on March 11, 2004. On April 26, 2004, the State filed a motion to dismiss the petition, arguing that no evidentiary hearing was warranted because appellant's arguments were incorrect as a matter of law. Appellant filed an opposition to the motion to dismiss. The district court dismissed the petition without conducting an evidentiary hearing. Appellant contends that the district court erred by dismissing the petition. We disagree.

This court has consistently afforded the district court wide discretion in its sentencing decision.<sup>2</sup> In exercising that discretion, the district court may consider prior crimes in order to gain "a fuller assessment of the defendant's 'life, health, habits, conduct, and mental and moral propensities.'"<sup>3</sup>

In this case, we note that the evidence presented at sentencing consisted of statements from victims of charges that had either been dismissed or not pursued in exchange for appellant's guilty plea. The guilty plea memorandum executed by appellant specifically provided that the district court could consider at sentencing "any counts which are to be

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<sup>2</sup>See, e.g., Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).


<sup>3</sup>Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

dismissed and any other cases charged or uncharged which are either to be dismissed or not pursued by the State."

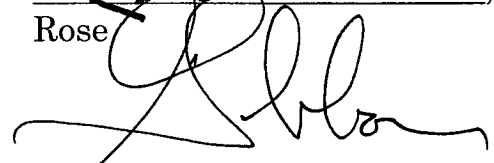
To the extent that appellant argues that the letters and testimony presented at sentencing were not from victims as defined by statute, we have previously stated that the victim impact statute merely designates who has a "right" to speak at a sentencing proceeding. It does not limit the type of evidence a court may consider at sentencing. NRS 176.015(3) grants certain victims of crime the right to express their views before sentencing; it does not limit in any manner a sentencing court's existing discretion to receive other admissible evidence.<sup>4</sup>

In sum, we conclude that appellant was not entitled to relief based on his claims of ineffective assistance and prosecutorial misconduct, and the district court did not, therefore, err by dismissing his petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

 \_\_\_\_\_, J.  
Gibbons

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<sup>4</sup>Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995).

cc: Second Judicial District Court Dept. 9, District Judge  
Scott W. Edwards  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk