IN THE SUPREME COURT OF THE STATE OF NEVADA

OTIS RAY WYNN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44341

FILED

FEB 16 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's proper person post-conviction motion for specific performance of the guilty plea. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On November 17, 1997, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary and four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve multiple consecutive and concurrent terms totaling 264 to 1,032 months in the Nevada State Prison. Appellant did not file a direct appeal.

On December 7, 1998, appellant filed a proper person post-conviction motion to withdraw his guilty plea. The State opposed the motion and the district court denied the motion on January 19, 1999. Appellant did not file an appeal.

On December 18, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed.

Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 30, 1999, the district court denied appellant's petition. On appeal, this court affirmed the order of the district court.[1]

On August 23, 2004, appellant filed a proper person post-conviction motion for specific performance of the guilty plea. The State opposed the motion. Appellant filed a reply. On December 28, 2004, the district court denied the motion. This appeal followed.

In his motion, appellant claimed that the district court breached the plea agreement. Specifically, appellant claimed that the district court breached the plea agreement by imposing some of his terms consecutively rather than concurrently and by allowing a victim impact statement to be given at sentencing. It appears appellant also argued that, by imposing the sentences consecutively, the district court sentenced him to a greater sentence than was provided for in the plea agreement. Appellant also claimed that the district court erred by failing to inform or give him an opportunity to withdraw his guilty plea, pursuant to NRS 174.065(3), since the district court did not follow the sentence announced in the plea agreement.[2]

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[1]Wynn v. State, Docket No. 34123 (Order of Affirmance, June 13, 2001).

[2]See 1993 Nev. Stat., ch. 279 § 1, at 828-29 (providing in pertinent part, that if the district court rejected a sentence recommendation from

continued on next page . . .

We conclude that the district court did not err in denying appellant's motion. The district court did not breach the plea agreement by imposing consecutive terms or by allowing a victim impact statement to be given at sentencing. The guilty plea agreement properly informed appellant of the possible ranges of sentences he could receive as a result of his plea. In the guilty plea agreement, appellant was advised that if more than one sentence was imposed, "the sentencing judge has the discretion to order the sentences served concurrently or consecutively." Appellant acknowledged in the plea agreement that he had "not been promised or guaranteed any particular sentence by anyone" and that "his sentence is to be determined by the Court within the limits prescribed by statute." Further, in the plea agreement, the State retained the right to argue at the rendition of sentencing. The district court did not impose a sentence greater than that contemplated by the plea agreement or prescribed by statute.[3] Furthermore, appellant's reliance upon former NRS 174.065(3) is misplaced because that provision was repealed effective June 24, 1993.[4]

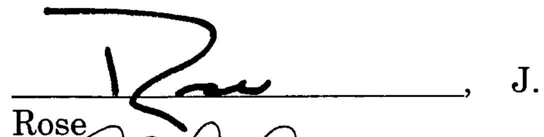
. . . *continued*
the defendant and the district attorney, the defendant may withdraw his plea).

[3]See NRS 205.060, NRS 200.380, NRS 193.165.

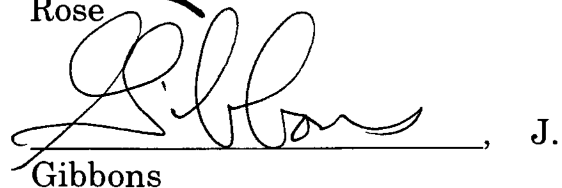
[4]See 1993 Nev. Stat., ch. 279 §§ 1,2, at 828-29.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[5] Accordingly, we

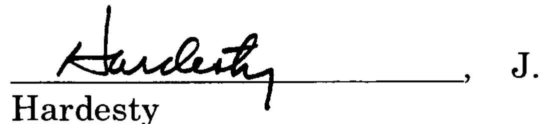
ORDER the judgment of the district court AFFIRMED.[6]



_______________, J.
Rose



_______________, J.
Gibbons



_______________, J.
Hardesty

cc: Hon. Michael A. Cherry, District Judge
Otis Ray Wynn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[5]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[6]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.