IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN MAUREEN BUTTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44658

FILED

APR 0 6 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a "motion to amend pleading." First Judicial District Court, Carson City; William A. Maddox, Judge.

On April 21, 2004, the district court convicted appellant, pursuant to a guilty plea, of robbery in a case arising from the First Judicial District Court. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. The district court imposed this sentence to run consecutively to a sentence imposed in a case arising from the Second Judicial District Court. No direct appeal was taken.

On August 26, 2004, and on January 24, 2005, appellant filed a "motion to amend pleading" in the district court.[1] The district court denied appellant's motions.[2] This appeal followed.

---

[1]The motions were identical. Because these motions challenged the validity of the judgment of conviction and sentence, we elect to treat the motions as post-conviction petitions for writs of habeas corpus. See NRS 34.724(2)(b).

[2]The district court denied the January 24, 2005 motion on January 25, 2005. Appellant filed her notice of appeal on February 4, 2005, and

continued on next page . . .

In her motions, appellant appeared to contend that her guilty plea agreement was unknowingly and involuntarily entered because her sentence was imposed to run consecutively with the sentence imposed in the Second Judicial District Court. She claimed that she only agreed to concurrent sentences. She appeared to claim that she should be allowed to withdraw her plea pursuant to NRS 174.065 because the sentence imposed was greater than the sentence recommended in the Second Judicial District Court. She also appeared to seek imposition of concurrent sentences.

A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.[3] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[4] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[5]

. . . continued

thus, her notice of appeal from the January 25, 2005 order is timely filed. The district court denied the August 26, 2004 motion on November 5, 2004. However, the district court did not serve notice of entry of the order. See NRS 34.575; NRS 34.830. Because service of notice of entry was not performed, the time for filing an appeal from the November 5, 2004 order never began to run. See Lemmond v. State, 114 Nev. 219, 954 P.2d 1179 (1998). Consequently, this court will consider both orders in the resolution of this appeal.

[3]Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[4]Hubbard, 110 Nev. at 675, 877 P.2d at 521.

[5]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

In its November 5, 2004 order, the district court concluded that appellant's claims lacked merit. Our review of the record on appeal reveals that the district court did not err. The record does not support appellant's assertions relating to the terms of the plea agreement. The controlling plea agreement, the plea agreement in the case arising from the First Judicial District Court, stated that the State was free to argue for consecutive sentences between the district court cases and that the defense was free to argue for concurrent sentences between the district court cases.[6] The plea agreement in the case arising from the Second Judicial District Court, although not binding on the First Judicial District Court, was not fundamentally inconsistent. The plea agreement in the Second Judicial District Court indicated that the Washoe County District Attorney's Office had no objection to concurrent sentences in the case arising from the First Judicial District Court. This language did not guarantee concurrent sentences or prevent the Carson City District Attorney's Office from arguing for consecutive sentences. The district court personally and thoroughly canvassed appellant about her understanding of the plea agreement. Thus, the record reveals that her plea was knowingly and voluntarily entered and that the plea agreement

---

[6]Appellant was serving time pursuant to a judgment of conviction arising from the Second Judicial District Court when she entered a plea in the case arising from the First Judicial District Court. See NRS 176.035(1) (providing that "whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed").

was not breached. Because the record does not support her claim, appellant is not entitled to the relief requested.[7]

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.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Douglas

_____, J.
Parraguirre

cc: Hon. William A. Maddox, District Judge
Susan Maureen Butts
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

---

[7]We note that appellant's reliance upon NRS 174.065 was misplaced, as the former subsection permitting for withdrawal of a guilty plea if the district court imposed a sentence in excess of the recommended sentence was repealed in 1993. See 1993 Nev. Stat., ch. 279, § 1, at 828-29.

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