IN THE SUPREME COURT OF THE STATE OF NEVADA

SIDNEY WILRIDGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44780

FILED

JUN 08 2005

CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant Sidney Wilridge's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On April 18, 1983, the district court convicted Wilridge, pursuant to a guilty plea, of three counts of robbery with the use of a deadly weapon, one count of assault with a deadly weapon, and one count of possession of a firearm by an ex-felon. The district court sentenced Wilridge to serve concurrent terms of fifteen years in the Nevada State Prison for each robbery count, plus an equal and consecutive term for the deadly weapon enhancement; a term of six years for the assault count; and a term of six years for the possession of a firearm by an ex-felon count. The sentences for assault and possession of a firearm by an ex-felon were imposed to run consecutively to each other and to the sentences for robbery with the use of a deadly weapon.

On October 12, 2004, Wilridge filed a post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss. Wilridge filed a reply. Pursuant to NRS 34.750 and 34.770,

the district court declined to appoint counsel to represent Wilridge or to conduct an evidentiary hearing. On February 3, 2005, the district court dismissed Wilridge's petition as untimely and successive. This appeal followed.[1]

In his petition, Wilridge contended that the Department of Corrections is improperly treating his sentence for robbery with the use of a deadly weapon as a single thirty-year sentence rather than two separate fifteen-year sentences. Wilridge argued that if his sentence had been severed into two distinct fifteen-year sentences, he would have expired the primary offense while paroled to the enhancement sentence. Wilridge claimed that he has been forced to serve a longer sentence due to his inability to satisfy both sentences concurrently.

Preliminarily, we note that the district court erred in finding that Wilridge's petition was both untimely and successive. Wilridge's petition challenged the computation of time he has served on his sentence and therefore was not subject to the one-year statutory time limit.[2] Although Wilridge previously filed a post-conviction petition for a writ of habeas corpus in the district court raising a challenge to the computation of time he has served on his sentence, that petition was also improperly

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[1]Wilridge has expired his sentences for assault with a deadly weapon and ex-felon in possession of a firearm. To the extent that Wilridge challenged the time he served on those sentences, we note that the issue is moot. See Johnson v. Director, Dep't Prisons, 105 Nev. 314, 774 P.2d 1047 (1989).

[2]See NRS 34.726(1).

denied as untimely and the merits of the petition were never addressed.[3] Therefore, the district court erred in concluding that the instant petition was procedurally barred, and we will address the merits of Wilridge's claim.

In Biffath v. Warden[4] and Director, Prisons v. Biffath,[5] this court held that a sentence for a primary offense and an enhancement sentence must be treated as one continuous sentence for the purposes of statutory good time credits and parole eligibility. In 1987, those decisions were overruled in Nevada Dep't Prisons v. Bowen.[6] In Bowen, we concluded that the primary and enhancement sentences must be treated as separate sentences for all purposes.[7] Because our decision in Bowen was not foreseeable, we directed that the opinion "be applied retroactively to the extent possible, but in no case shall this opinion be applied to the detriment of any prisoner sentenced before the date hereof."[8]

We conclude that Wilridge did not establish that the Department of Corrections erred in failing to sever his sentence for robbery with the use of a deadly weapon. Wilridge was convicted in 1983; at that time, pursuant to Biffath, the deadly weapon enhancement

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[3]See NRS 34.810(2).

[4]95 Nev. 260, 593 P.2d 51 (1979).

[5]97 Nev. 18, 621 P.2d 1113 (1981).

[6]103 Nev. 477, 745 P.2d 697 (1987).

[7]Id. at 481, 745 P.2d at 699-700.

[8]Id. at 481 n.4, 745 P.2d at 700 n.4.

sentence was not considered separate and distinct from the sentence for the primary offense. After Bowen was decided, prison officials notified Wilridge that his sentence for robbery with the use of a deadly weapon would not be divided because doing so would prejudice him. Specifically, Wilridge had already surpassed parole eligibility on one-half of his total parole eligibility on the combined sentence.[9] Therefore, it was in Wilridge's best interest to leave his sentence combined.[10] There is nothing in the record to indicate that Wilridge objected to this sentence structure at the time.

In the instant petition, Wilridge appeared to argue that if his sentence for robbery with the use of a deadly weapon had been divided, he would have expired the sentence in 2001.[11] Wilridge failed to adequately support this claim, however, aside from bare speculation.[12] Because Wilridge did not establish the Department of Corrections erred in failing to sever his sentence immediately after this court's decision in Bowen, or

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[9]Wilridge was eligible for parole from the aggregated sentence the following year.

[10]Wilridge may also have benefited by earning a greater number of statutory good time credits. See NRS 209.443.

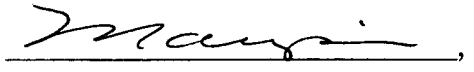
[11]Specifically, Wilridge contended that he would have "expired the first 15 years in 9 years or so, expired the second 15 years in 9 years or so, equaling 18 years."

[12]We note that Wilridge was released on parole for a lengthy period of time, but violated parole conditions. The statutory credit he earned while released on parole was subject to forfeiture. See NRS 213.1518.

that he was subsequently prejudiced by the combined sentence, we affirm the district court's denial of his petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wilridge is not entitled to relief and that briefing and oral argument are unwarranted.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.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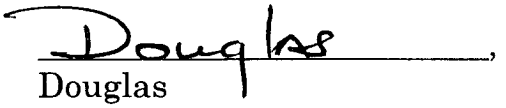
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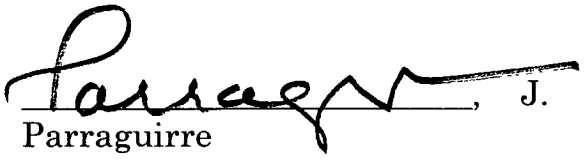
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cc: Hon. Donald M. Mosley, District Judge
Sidney Wilridge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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