

IN THE SUPREME COURT OF THE STATE OF NEVADA

MONICA LYNN CALLOWAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44971

FILED

JAN 24 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a plea of no contest, of theft against a person age 65 or older. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Monica Lynn Calloway to serve a prison term of 12 to 60 months for theft and an equal and consecutive prison term for the age enhancement. Calloway presents four issues for our review.

First, Calloway contends that trial counsel was ineffective in assisting her with her plea of no contest and therefore she did not know the consequences of her plea and did not enter her plea knowingly, voluntarily, and intelligently. We decline to consider Calloway's ineffective assistance arguments on direct appeal.¹ Claims of ineffective assistance of counsel are more appropriately raised in the district court in the first instance by way of a petition for post-conviction relief.²

Second, Calloway contends that the district court improperly applied the enhancement for theft against a person age 65 or older

¹Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995).

²Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).

because the victim was a company and not an elderly person. However, Calloway specifically pled no contest to the crime of theft against a person age 65 or older as alleged in count II of the criminal information:

Defendant, acting pursuant to a scheme or continuous course of conduct, obtained four personal checks from Cora C. (a resident of Washoe Progressive Care Center (WPCC), 1835 Oddie Boulevard, Sparks; and over the age of 65). Defendant negotiated, endorsed, cashed and or deposited into an account other and [sic] an account of Cora C's, the checks; thereby depriving Cora C. of the property. Defendant obtained the checks by communication of material misrepresentation to Cora C. and or Janice M., and or Terrie V. (Cora C.'s relatives) indicating the checks were to pay for rent and services owing WPCC. Rent and services due WPCC were not paid for with the checks. The checks totaled an aggregate amount in excess of \$250.00, and less than \$2,500.00.

Accordingly, we conclude that the district court properly enhanced Calloway's sentence.³

Third, Calloway contends "[t]hat the ex-felony charge she discussed with her counsel was a misdemeanor and not a felony," and, with nothing more, directs our attention to Franklin v. State.⁴ We

³See NRS 193.167(1)(j) (providing that a defendant who commits theft against a person who is 60 years of age or older shall be imprisoned "for a term equal to and in addition to the term of the imprisonment prescribed by statute for the crime"). Prior to October 1, 2003, the threshold age for determining the applicability of NRS 193.167 was 65. See 2003 Nev. Stat., ch. 422, § 1 at 2566; NRS 218.530.

⁴110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

conclude that Calloway has failed to present a cogent argument, and we decline to consider her contention.⁵

Fourth, Calloway contends that she is entitled to a new sentencing hearing due to factual mistakes in the presentence investigation report (PSI) and the inattentiveness of the sentencing court during trial counsel's presentation. Calloway does not provide any specific factual details in support of her claim. However, our review of the sentencing transcript reveals that trial counsel commented on mistakes in the PSI and made corrections. Later, when the district court became distracted by a man reading a newspaper, the district court instructed the bailiff to remove the man and then asked counsel to repeat his question. We conclude that Calloway failed to demonstrate that she was denied an opportunity to examine and comment on the factual assertions contained in the PSI,⁶ that the district court misapprehended her criminal record and based its sentence upon materially untrue assumptions or mistakes which worked to her extreme detriment,⁷ or that the district court's actions so eroded "public confidence in the integrity and impartiality of the judiciary" that a new sentencing hearing is necessary.⁸

⁵See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

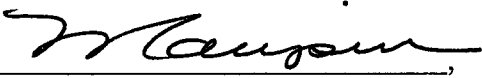
⁶See Shields v. State, 97 Nev. 472, 634 P.2d 468 (1981).

⁷See State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1049 (1984).

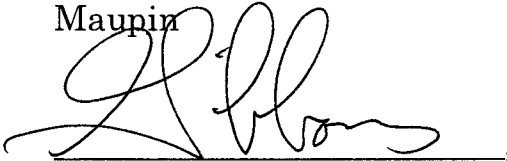
⁸Paine v. State, 107 Nev. 998, 1001, 823 P.2d 281, 283 (1991) (quoting NCJC Canon 2A (1977)).

Having considered Calloway's contentions and concluded that they are without merit, we


ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Steven R. Kosach, District Judge
Donald York Evans
Attorney General George Chanos/Las Vegas
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk