

IN THE SUPREME COURT OF THE STATE OF NEVADA


RAVEN STARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45771

FILED

JAN 13 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On November 17, 2004, the district court convicted appellant, pursuant to a guilty plea, of three counts of conspiracy to traffic in a controlled substance. The district court sentenced appellant to serve three consecutive terms of twenty-four to sixty months in the Nevada State Prison. The district court suspended the sentences and placed appellant on probation for a period of time not to exceed four years. The district court revoked probation on April 7, 2005, executed the original sentence and amended the judgment of conviction to include 361 days' credit for

time served. This court dismissed two of appellant's appeals from her judgment of conviction for lack of jurisdiction.¹

On May 24, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 13, 2005, the district court denied appellant's petition. This appeal followed.

In her petition below, appellant contended that her counsel was ineffective.² To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that her counsel's performance fell below an objective standard of reasonableness.³ Further, a petitioner must

¹Stark v. State, Docket No. 45323 (Order Dismissing Appeal, July 8, 2005) and Docket No. 45272 (Order Dismissing Appeal, July 6, 2005).

²To the extent that appellant raised any of the following issues independently from her ineffective assistance of counsel claims or her computation of time served claims, we conclude that they fall outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

³Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.⁴ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

First, appellant claimed that co-counsel was ineffective for failing to request a continuance so that lead counsel could be present. Appellant claimed that lead counsel had negotiated with the district court for two of her three counts to run concurrently, however, the district court sentenced her to three consecutive terms. Appellant also claimed that counsel was ineffective for failing to secure concurrent terms because her co-defendant received concurrent terms and her presentence investigation report recommended concurrent terms. Appellant failed to demonstrate that counsel's performance was deficient, or that if co-counsel had requested the continuance, appellant would have not pleaded guilty and would have insisted on going to trial. The plea agreement stated that the sentencing judge had the discretion to order the sentences be served concurrently or consecutively, that appellant was pleading voluntarily, and that pleading guilty was in her best interest. The State specifically

⁴See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁵Strickland, 466 U.S. at 697.

reserved the right to argue at sentencing. Appellant was aware of the consecutive sentences before being placed on probation, and the district court warned appellant that if she violated probation she would serve three consecutive terms of twenty-four to sixty months. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate her guilty plea.⁶ Appellant failed to demonstrate that her counsel was ineffective, and thus, the district court did not err in denying this claim.

Second, appellant claimed that her counsel was ineffective for failing to object to her illegal arrest for a probation violation. Appellant claimed that her probation should have been reinstated. Appellant failed to demonstrate that counsel's performance was deficient. Appellant was subject to a search for controlled substances, drug paraphernalia and weapons as a condition of probation. Four days after appellant's release, her house was searched and drug paraphernalia was discovered, including a digital scale and two glass smoking pipes. Thus, appellant violated the conditions of her probation. Therefore, appellant's arrest was not illegal, and appellant failed to demonstrate that counsel's performance was ineffective. Thus, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for not ensuring that she was sentenced to twelve to sixty months on all counts,

⁶See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

rather than the twenty-four to sixty months that she received. Appellant failed to demonstrate that counsel was ineffective. The plea agreement stated that appellant had not been promised or guaranteed any particular sentence and that she understood that her sentence was to be determined by the court within the limits prescribed by statute. The district court sentenced appellant within statutory limits.⁷ Appellant was informed of what her sentence would be if she violated probation. Thus, the district court did not err in denying this claim.

Next, appellant claimed that her credit for time served was miscalculated. Specifically, appellant claimed that she should have received 361 jail credits on each of her three consecutive sentences. The district court denied this claim on the ground that credit is not properly sought in a habeas corpus petition. The district court was wrong. A petition for a writ of habeas corpus is the appropriate vehicle for challenges regarding the computation of time pursuant to a judgment of conviction.⁸ Nevertheless, we conclude the district court did not err in

⁷NRS 453.3385(1) (providing for a term of not less than one year and not more than six years); and NRS 453.401(1)(a) (providing for a term of not less than one year and not more than five years).

⁸NRS 34.720(2).

denying this claim.⁹ Appellant's terms were consecutive, and therefore, credits were properly applied only to the first term. Petitioner is not entitled to have credit applied to each of her consecutive terms.¹⁰ Thus, the district court did not err in denying this claim.

Appellant further claimed that the district court did not fully credit her for time served. This claim is belied by the record.¹¹ Appellant was initially credited with 347 days' credit. Counsel moved for additional credit and a hearing was held on February 24, 2005, in order to verify appellant's credit. Appellant was credited with fourteen additional days for a total of 361 days' credit. The State specifically reviewed the jail records and distributed copies to the district court and appellant's counsel. Although appellant was correct that she was in continuous custody from October 10, 2002, until January 29, 2004, she was in custody on a parole

⁹See Milender v. Marcum, 110 Nev. 972, 879 P.2d 748 (1994) (stating that this court may affirm the district court's decision on grounds different from those relied upon by the district court).

¹⁰Compare Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004) (holding that presentence credit be applied to concurrent sentences).

¹¹Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

violation in another case from October 10, 2002, until January 14, 2003.¹² A defendant is not entitled to jail time credits where she was in custody on another charge.¹³ Thus, the district court did not err in denying this claim.

Next, it appears that appellant argued that she did not pursue a direct appeal because she was not informed by her trial counsel that a direct appeal could be taken from a guilty plea. Appellant failed to demonstrate that her counsel was ineffective for allegedly failing to inform her of the right to appeal.¹⁴ The written guilty plea agreement correctly informed appellant of her limited right to a direct appeal.¹⁵ Appellant did not state that she expressed a desire to appeal and counsel failed to do so.¹⁶ Therefore, the district court did not err in denying appellant's claim.

¹²Appellant was in custody for district case No. 155624. Appellant moved the district court to amend credits in that case, and on May 28, 2003, appellant's motion was granted.

¹³NRS 176.055(2)(b).


¹⁴See Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

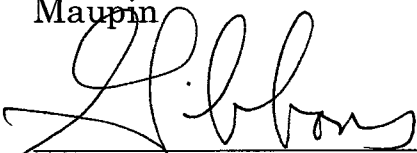
¹⁵See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

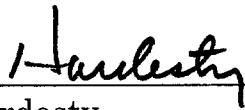
¹⁶See id.

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.¹⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁸


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

¹⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁸We 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.

cc: Honorable Jackie Glass, District Judge
Raven Stark
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk