

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY CRAIG MONTELATICI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47685

FILED

APR 05 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of aggravated stalking. Second Judicial District Court, Washoe County; Robert H. Perry, Judge. The district court sentenced appellant Jeffrey Craig Montelatici to serve a prison term of 24 to 60 months and imposed the sentence to run consecutively with a sentence that Montelatici received in another case.

First, Montelatici contends that he did not knowingly and voluntarily enter his guilty plea and that the factual basis for the plea was insufficient. This court

no longer permit[s] a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance,

either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding.¹

If Montelatici does in fact wish to withdraw his guilty plea, he may either file a motion to withdraw his plea in the district court or file a post-conviction petition for a writ of habeas corpus.

Second, Montelatici contends that the district court abused its discretion by sentencing him to a consecutive rather than a concurrent sentence. He argues that the sentence was excessive given that there was no physical violence and that the victim expressed support for him in her impact statement.

This court consistently afforded the district court wide discretion in its sentencing decision.² This court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."³ A sentence that is within the statutory limits is not "cruel and unusual punishment unless the statute fixing punishment is

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

²See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

³Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience."⁴

Here, Montelatici does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant statute is unconstitutional. Our review of the record reveals that the sentence imposed by the district court falls within the parameters provided by the relevant statute.⁵ And we note the district court has discretion to impose consecutive sentences.⁶

Third, Montelatici contends that the State breached the plea agreement when it recommended "that a consecutive sentence to the CR05-2974 case would be appropriate." In Van Buskirk v. State,⁷ we explained that when the State enters a plea agreement, it "is held to 'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and the spirit of the plea bargain, and that

⁴Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

⁵See NRS 200.575(2) (aggravated stalking is punishable by a prison term of 2 to 15 years).

⁶See NRS 176.035; Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

⁷102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

due process requires that the bargain be kept when the guilty plea is entered. We have held that "[t]he violation of either the terms or the spirit of the agreement requires reversal."⁸

Here, the initial plea agreement appears in six handwritten terms on Montelatici's preliminary examination waiver. One of the terms appears to state "If time given to NSP no obj. to concurrent." This term was not included in the written plea agreement and it was not discussed during the district court's plea canvass. The term is ambiguous and may have been dropped during further negotiations between the parties. The mere presence of this term on the waiver is not evidence that the State breached the terms or the spirit of the agreement.

Fourth, Montelatici contends that NRS 193.166, which provides an additional penalty for crimes committed in violation of a protective order, is unconstitutional. However, because Montelatici was not punished under the provisions of this statute, we decline to consider his contention.

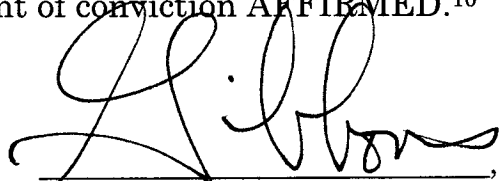
Fifth, Montelatici contends that defense counsel was ineffective for failing to hold the State to the plea agreement that was initially negotiated by the parties. Generally, challenges to counsel's effective representation are best raised in a post-conviction petition for a writ of habeas corpus in the district court, so that an evidentiary hearing

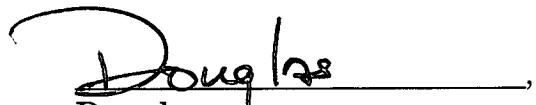
⁸Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999).

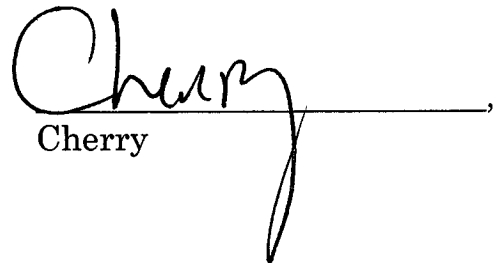
can be conducted to review and resolve factual uncertainties.⁹ Montelatici has not demonstrated that his claim of ineffective assistance of counsel warrants a departure from the general rule.

Having considered Montelatici's contentions and concluded that they are either without merit, or not appropriately raised on direct appeal, we

ORDER the judgment of conviction AFFIRMED.¹⁰


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁹Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013-14 (2001).

¹⁰Because Montelatici is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Montelatici has submitted to this court in this matter.

cc: Hon. Robert H. Perry, District Judge
Karla K. Butko
John P. Calvert
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk