IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER, JR. A/K/A RICKIE SLAUGHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48742

FILED

JUL 24 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

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; Douglas W. Herndon, Judge.

On August 31, 2005, the district court convicted appellant, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon (Count 1), robbery with the use of a deadly weapon (Count 2), first degree kidnapping with substantial bodily harm (Count 3), and first degree kidnapping with the use of a deadly weapon (Count 4). The district court sentenced appellant to serve in the Nevada State Prison two equal and consecutive terms of 90 to 240 months for Count 1; two equal and consecutive terms of 72 to 180 months for Count 2, to run concurrent with Count 1; life with the possibility of parole after 15 years for Count 3, to run concurrent with the sentences for Counts 1 and 2; and two equal and consecutive terms of life with the possibility of parole after 5 years for

Count 4, to run concurrent with the terms for Counts 1, 2, and 3. Appellant did not file a direct appeal.

On August 7, 2006, 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 January 29, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the district court relied on suspect evidence to determine his sentence. Specifically, appellant claimed that there was not sufficient proof that a victim of his crime lost an eye as a result of his crime and the district court nevertheless relied on this evidence in determining his sentence. As appellant's claim did not address the voluntariness of his plea or whether his plea was entered without the effective assistance of counsel, appellant's claim fell outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea.[1] Thus, the district court did not err in denying this claim, and we affirm this portion of the district court's order.

Appellant also challenged the voluntariness of his plea. A guilty plea is presumptively valid, and a petitioner carries the burden of

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[1]NRS 34.810(1)(a).

establishing that the plea was not entered knowingly and intelligently.[2] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[4] In addition, a petitioner's subjective belief "as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing."[5]

Appellant claimed that his plea was involuntary based on promises that his resulting sentence would permit his release in 15 years. The record on appeal reveals that appellant was informed of the potential sentences he faced in the plea agreement and plea canvass, and that appellant acknowledged the district court was not bound by the plea negotiations. However, it appeared that appellant pleaded guilty based on an understanding that offered him the opportunity to be released after 15 years. Standby counsel for appellant and counsel for the State indicated that they both understood that the minimum sentence appellant could serve would be 15 years. Further, the district court stated at sentencing

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

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

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

[5]Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

that appellant was receiving the benefit of the bargain and purportedly sentenced appellant to terms of imprisonment that would permit his release in 15 years. Therefore, it is unclear if appellant was informed by the State or district court that he would only serve a sentence of 15 years before he was eligible for release or if he was actually informed he could receive a greater sentence.

Whether appellant was informed by the State or district court that under his plea agreement, he would be eligible for parole after having served 15 years is of crucial importance given the mechanics of appellant's sentence structure. It appears, for example, that it may have been legally impossible to structure appellant's sentences in a manner that would permit appellant's release after only 15 years. Notably, the Nevada Department of Corrections ("NDOC") has considered appellant's 15-to-life sentence for Count 3 the controlling sentence for purposes of parole eligibility pursuant to NRS 213.1213.[6] Although the NDOC lists appellant's sentences for the primary offenses of Counts 1, 2, and 4 as

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[6]NRS 213.1213 provides:

> If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

running concurrent with the controlling sentence,[7] appellant cannot begin serving the equal and consecutive deadly weapon enhancement sentences for those counts until he completes the underlying, primary offense sentences. It appears that appellant will not complete those underlying sentences, at least regarding Count 4, until he is paroled on the controlling sentence.[8] Thus, the sentences for the deadly weapon enhancements on those counts would not begin to run until appellant was paroled on the controlling count, which did not contain a deadly weapon enhancement. While the district court expressed its desire to accommodate the sentence that appellant apparently bargained for, and thus sentenced appellant to a sentence it believed permitted his release in 15 years, it appears the NDOC has structured appellant's sentence in a manner that will not permit appellant to be eligible for release until he has served more than 15 years. The effect of this is that the NDOC has apparently structured appellant's sentences to require the deadly weapon

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[7]The sentences for appellant's primary offenses include: the 90 to 240 month sentence for attempted murder with the use of a deadly weapon (Count 1); the 72 to 180 month sentence for robbery with the use of a deadly weapon (Count 2); and the 5-to-life sentence for first-degree kidnapping with the use of a deadly weapon (Count 4). The deadly weapon enhancements sentences are the equal and consecutive terms imposed on Counts 1, 2, and 4.

[8]It appears that under NRS 213.1213, appellant may not be eligible for parole on the sentences for the primary offenses until he is paroled on the controlling sentence. It further appears, however, that appellant may be discharged from a fixed term sentence while serving time on the controlling sentence – Count 3.

enhancement for Count 4 to run consecutively to Count 3, contrary to the sentence structure set forth in the judgment of conviction.

It is unclear, however, whether NRS 213.1213 requires the sentence structure as calculated by NDOC. There does not appear to be any language in NRS 213.1213 precluding the NDOC from treating the sentences for the primary offenses and deadly weapon enhancements for each count as a "block" and paroling appellant on the sentences for the primary offenses and the deadly weapon enhancements for Counts 1 and 4 when appellant is paroled from the controlling sentence set forth in Count 3. Given the district court's intention, as expressed at sentencing and in the judgment of conviction, that appellant be required to serve a minimum term of 15 years before parole eligibility and the fact that the district court ordered the sentences for Counts 1 and 4 to run concurrently with Count 3, it appears that appellant could be paroled for both the primary offense and the deadly weapon enhancement as a "block."[9]

Accordingly, we remand this claim for an evidentiary hearing to determine whether appellant's plea was voluntary in light of the alleged mistake concerning the minimum sentence upon which appellant, his counsel, counsel for the State, and the district court apparently relied in

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[9]But see NRS 213.120(2) (providing that a prisoner may be paroled when he has served the minimum term of imprisonment imposed by the court); Nevada Dep't of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987) (holding that NRS 193.165 clearly shows legislative intent to impose a separate and distinct penalty for the use of a deadly weapon that must be treated as a separate sentence for all purposes).

the proceedings. In particular, the district court should determine whether appellant was informed, and by whom, that he would or could receive a total minimum sentence of only 15 years. Moreover, the district court should determine whether it was legally possible to achieve a total minimum sentence of 15 years under NRS 213.1213.[10] Lastly, the district court should determine whether NRS 213.1213 precludes the NDOC from paroling appellant on the sentences for the primary offenses with the deadly weapon enhancements, when it paroles appellant on the controlling sentence.[11] The district court should elicit a response from the Attorney General as the NDOC's structuring of appellant's sentences would appear to fall within the Attorney General's provenance. Further, given the complexities, the district court may wish to appoint counsel to assist appellant in this matter.

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[10]If the district court had imposed sentences with maximum terms of 90 months or less for Counts 1 and 2, and a sentence of 5 to 15 years instead of 5 years to life on Count 4, then it may have been theoretically possible to achieve a total minimum sentence of 15 years imprisonment before parole eligibility under the NDOC's interpretation of NRS 213.1213.

[11]In referring to the sentence as a block, this court refers to the cumulative sentence for each count. Expressed visually, the sentence structure appears as:

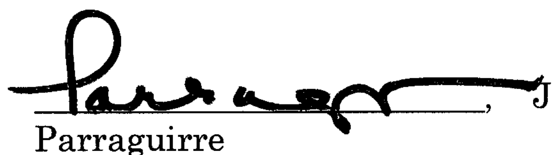
15-life

concurrent with

[(90-240 +90-240) concurrent with (72-180 + 72-180) concurrent with (5 – life + 5 – life)]

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[13]



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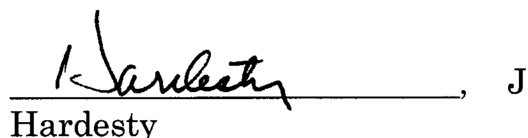

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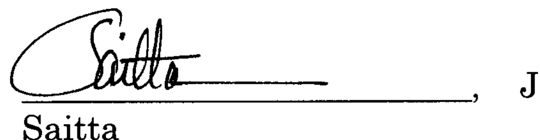

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cc: Hon. Douglas W. Herndon, District Judge
Rickie Lamont Slaughter Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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

[13]We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. In addition, this order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.