

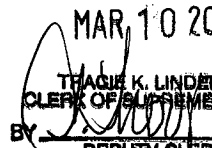
IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ANDREW DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50024

FILED

MAR 10 2008

THOMAS K. LINDENMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court adjudicated appellant Thomas Andrew Davis as a habitual criminal and sentenced him to a prison term of 5 to 20 years.

On July 24, 2004, Davis pleaded guilty to burglary in district court case no. CR04-1634, which involved a burglary of a Reno restaurant that occurred on June 24, 2004. In exchange for Davis' guilty plea, the State agreed not to pursue any other "transactionally related cases, charges or enhancements." Approximately one year later, the State filed an indictment in the instant case, CR05-1314, accusing Davis of committing a burglary in the same Reno restaurant on June 17, 2004. Davis filed a motion to dismiss in the district court. After conducting an evidentiary hearing, the district court denied Davis' motion to dismiss. Thereafter, Davis entered a guilty plea in the instant case to the second burglary.

08-05804

Davis contends that the district court erred in denying his motion to dismiss.¹ Specifically, Davis argues that this case should be dismissed because it is “transactionally related” to case no. CR04-1634, and by pursuing a transactionally-related case, the State breached the plea agreement in CR04-1634.

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.² Factual findings of the district court that are supported by substantial evidence are entitled to deference when reviewed on appeal.³

After conducting an evidentiary hearing, the district court denied the motion to dismiss. The district court found that the instant case was not transactionally-related to case no. CR04-1634 and, therefore, the prosecutor did not breach the plea agreement in case no. CR04-1634. The district court’s findings are supported by substantial evidence. In particular, we note that the prosecutor testified that, at the time of the plea negotiations in case no. CR04-1634, she did not know whether Davis had committed the second burglary, and the State was awaiting the results of DNA testing of evidence found at the scene of the crime. The

¹The State concedes in its appellate brief that Davis reserved the right to challenge the district court’s pretrial ruling on the motion to dismiss pursuant to NRS 174.035(3).

²Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

³See generally Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

prosecutor also testified that she clearly informed Davis' attorney that any criminal charges resulting from the second burglary would not be included in the plea negotiations. Further, defense counsel confirmed that, according to a memorandum written by Davis' attorney, the second burglary was not part of the plea negotiations in case no. CR04-1634. Accordingly, the district court did not err in denying the motion to dismiss.

Davis also contends that his sentence is illegal because it exceeded the statutory limits for burglary. Davis notes that the judgment of conviction does not specify that he was adjudicated as a habitual criminal. Davis has failed to demonstrate that the sentence imposed is illegal. Here, the State alleges, and the district court minutes indicate, that the district court adjudicated Davis as a habitual criminal and imposed the appropriate sentence pursuant to NRS 207.010(1)(a). The burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error.⁴ Davis has not alleged that the district court minutes are inaccurate, and he has failed to provide this court with a transcript of the sentencing hearing.⁵ It therefore appears that the judgment of conviction contains an error of omission in that it does not specify that Davis was adjudicated as a habitual criminal.

⁴Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980) (the burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error).

⁵We note that if the sentencing transcript indicates that Davis was not adjudicated as a habitual criminal, Davis may file a motion to correct an illegal sentence in the district court. See NRS 176.555.

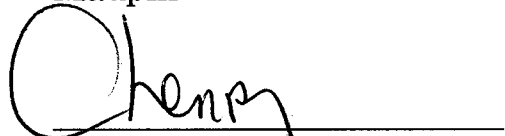
Following this court's issuance of its remittitur, the district court shall correct the error in the judgment of conviction.⁶

Having considered Davis' contentions and concluded they are without merit, we

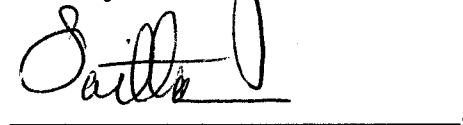
ORDER the judgment of conviction AFFIRMED.

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Michael V. Roth
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).