

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS R. CROCKETT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34850

FILED

JUN 27 2001

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

ORDER OF AFFIRMANCE

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.

On January 8, 1998, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court sentenced appellant to serve a term of 12 to 30 months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 25, 1999, 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 August 4, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately sixteen months after entry of the judgment of conviction. Thus,

appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant argued that he was not aware of the grounds alleged in the petition until April 21, 1999, when a prison counselor informed him that he had a consecutive sentence to serve following the sentence imposed in this case. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate cause to excuse his delay. The allegations in the petition are based on appellant's claim that the State breached the plea agreement at sentencing. Appellant was therefore aware of the grounds for the allegations in his petition at the time of sentencing. Accordingly, we conclude that any confusion or misunderstanding he had about the sentences in his various cases does not excuse his delay.

Moreover, even assuming that appellant had demonstrated cause for his delay, we further conclude that he failed to demonstrate prejudice. Appellant had three district court cases pending in addition to the instant case. The plea agreement in this case provided that the State would not object to a concurrent sentence with that imposed in one of the other cases, district court case C143422. The plea

¹See NRS 34.726(1).

²See id.

agreement did not mention the other two pending cases.³ At sentencing in this case, the prosecutor and defense counsel acknowledged that the district court could not impose the concurrent sentence because case C143422 had not yet gone to trial or been negotiated. The prosecutor indicated that the State would seek concurrent sentences in that case at the appropriate time. Approximately five months later, another department of the district court entered a judgment of conviction in case C143422. That judgment is silent with respect to the sentence in the instant case and there is nothing to indicate that the sentence in case C143422 is being treated as being consecutive to the sentence in the instant case. Rather, it appears that the consecutive sentence that appellant must serve is the result of the judgment of conviction entered in one of the other cases, district court case C146714. In that case, the district court imposed a sentence of 13 to 60 months to be served consecutively to the instant case and concurrently with case C143422. However, case C146714 was not part of the plea agreement in this case.


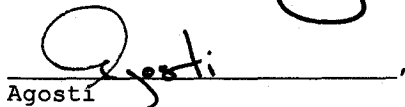

³Contrary to appellant's assertions, the discussion at the sentencing hearing of this provision of the agreement does not support appellant's claim that the agreement applied to the sentences in the other two pending cases. At one point, the district court stated the negotiations as follows: "Thirty-six and run concurrent with the other cases?" (Emphasis added). However, the parties always referred to only one "case" which involved a burglary charge. Although they did not refer to the case number, it is clear from the different charges in each district court case that they were referring to case C143422. Moreover, when asked how many cases appellant had, defense counsel indicated that he was only aware of two.

Under the circumstances, we conclude that appellant cannot demonstrate prejudice.

Because appellant failed to demonstrate cause and prejudice, we conclude that the district court should have dismissed the petition as procedurally barred.⁴ Accordingly, we conclude that the district court did not err in denying the petition.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


Shearing J.

Agosti J.

Rose J.

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Thomas R. Crockett
Clark County Clerk

⁴See NRS 34.726(1).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.