IN THE SUPREME COURT OF THE STATE OF NEVADA

MERLIN WAYNE WINTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34871

FILED

AUG 16 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

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 May 19, 1999, the district court convicted appellant, pursuant to an Alford[1] plea, of one count of being in possession of a credit card without the cardholder's consent, a violation of NRS 205.690. The district court sentenced appellant to serve a maximum term of thirty months in the Nevada State Prison with a minimum parole eligibility of twelve months. Appellant was credited with 103 days of time served. Appellant did not file a direct appeal.

On May 18, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On June 16, 1999, appellant filed another petition entitled "Post-Conviction Petition" which amended his May 18, 1999 petition. The State opposed the petition. On August 4, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that: (1) the State breached the terms of the plea agreement where the State agreed to make no recommendation at sentencing, and where appellant was promised enrollment in a drug treatment program; (2) the district court failed to credit appellant with time served in a different district court case; (3) the plea agreement contained the element of intent where appellant did not have the

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

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requisite intent to commit the crime; and (4) the pre-sentence report contained errors. Our review of the record on appeal reveals appellant's contentions lack merit.

First, appellant claimed that the State breached the plea agreement. In exchange for his plea, the State agreed to make no recommendation at sentencing. A review of the record reveals that the State did not make a recommendation at the sentencing hearing. Appellant's claim that a drug rehabilitation program was a part of the plea agreement is belied by the record. Therefore, the State did not breach the plea agreement. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Second, appellant claimed that the district court failed to credit him in the instant district court case with time served in a different district court case. Appellant is not entitled to credit for time served in a different district court case. See NRS 176.055(1) ("the court may order that credit be allowed against the duration of the sentence . . . unless [defendant's] confinement was pursuant to a judgment of conviction for another offense") (emphasis added).

Third, appellant claimed that the written plea agreement contained the element of intent where appellant did not have the requisite intent to commit the crime. This claim is without merit. Appellant entered an Alford plea to the offense. Appellant's mens rea is irrelevant.

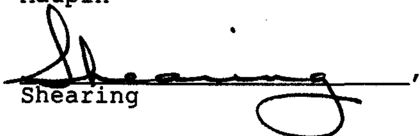
Finally, appellant claimed the pre-sentence report erroneously indicated that appellant was "in the District Court Program, Drug Court and Nevada State Probation and Parole." Appellant waived this claim by failing to raise it on direct appeal. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Moreover, there is no indication from the record that the sentencing court relied on misinformation about appellant's criminal record in rendering its decision. See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) ("So 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, this court will refrain from interfering with the sentence imposed").

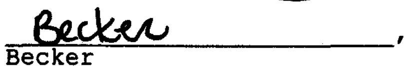
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.[2]

Maupin, J.



Shearing, J.



Becker, J.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Merlin Wayne Winton
Clark County Clerk

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

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