

IN THE SUPREME COURT OF THE STATE OF NEVADA

RACHAL S. SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54323

RACHAL S. SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54660

FILED

FEB 04 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus and motion for sentence modification, motion to withdraw the guilty plea, and motion for a restitution hearing.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

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¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

In her petition for a writ of habeas corpus filed on April 6, 2009, appellant raised a number of claims of ineffective assistance of trial counsel. To show that trial counsel was ineffective, appellant must demonstrate that her counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there was a reasonable probability of a different result in the proceedings. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show prejudice to invalidate the decision to enter a guilty plea, appellant must demonstrate that she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697.

First, appellant claimed that her trial counsel failed to: (1) adequately investigate what charges should have been considered a personal loan to appellant or business-related expenses as compared to those charges involving theft from the company; (2) obtain copies of the company's profit and loss statements for 2005 thru 2007, her years of employment; (3) obtain copies of balance sheets for 2005 thru 2007; (4) obtain payroll records from 2005 thru 2007 to show she was attempting repayment; (5) obtain copies of T-Mobile records from August 2007 thru November 2007; and (6) provide her a copy of discovery. Appellant failed to demonstrate that any of the alleged deficiencies prejudiced her. Appellant received a substantial benefit by entry of her plea to two counts of theft, one count of obtaining and using the personal identification information of another, and one count of forgery; she avoided sixteen

additional counts of theft and three counts of forgery. During the sentencing hearing, trial counsel stated that appellant was eligible for habitual criminal treatment but that the matter had been negotiated to avoid that. Appellant failed to demonstrate that further investigation would have led to the discovery of any evidence that would have had a reasonable probability of altering her decision to enter a guilty plea in light of the benefit that she received. Therefore, we conclude that the district court did not err in denying these claims.

Next, appellant claimed that her trial counsel was ineffective at the preliminary hearing for failing to adequately cross-examine the victims regarding one of the credit cards because the police report indicated that the victims knew that she possessed the credit card and failing to allow her to testify. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Trial counsel did cross-examine the victims about the discrepancy between their testimony and the police report and both of the victims indicated the police report contained incorrect information. At the conclusion of the State's presentation of evidence, trial counsel indicated that he had advised appellant of her right to testify and she declined to testify at the hearing. Appellant failed to demonstrate by a reasonable probability that the results of the preliminary hearing would have been different had trial counsel questioned the victims further about the police report or had appellant testified at the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that trial counsel failed to object to the State's request for a higher bail amount at the conclusion of the preliminary hearing. The factual premise of this claim, that trial counsel

failed to object, is belied by the record on appeal. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Thus, appellant failed to demonstrate that her trial counsel was ineffective in this regard, and we conclude that the district court did not err in denying this claim.

Next, appellant claimed that trial counsel failed to object to prosecutorial misconduct at the preliminary hearing. Appellant reasoned that the State's statement at the conclusion of the hearing that they had contacted her employers regarding her pending criminal charges was misconduct. Appellant failed to demonstrate that trial counsel's performance was deficient or that she was prejudiced. Appellant failed to demonstrate that any objection would have been sustained or would have had a reasonable probability of changing the result of the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed: (1) various constitutional rights were violated by prosecutorial misconduct; and (2) various constitutional rights were violated with the imposition of an excessive and disproportionate sentence. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Therefore, we conclude that the district court did not err in denying the petition for a writ of habeas corpus.

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July 7, 2009 Motion for Sentence Modification

In her motion, appellant claimed that her sentence was illegal because of charging errors and the imposition of consecutive sentences. Appellant failed to demonstrate that there was a material mistake about

her criminal record that worked to her detriment or that the sentence was illegal. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant may not challenge charging errors in a motion for modification of or to correct a sentence. It was within the district court's discretion to impose the counts consecutively. NRS 176.035(1). Therefore, we conclude that the district court did not err in denying the motion for sentence modification.

July 8, 2009 Motion to Withdraw the Guilty Plea

In her motion, appellant claimed that her plea was invalid because (1) the district court improperly induced her guilty plea by denying her motion to dismiss counsel, (2) she did not receive discovery, and (3) she was led to believe that she would receive concurrent sentences. Appellant failed to carry her burden in demonstrating that her guilty plea was invalid. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986). Appellant acknowledged that she had signed, read and understood a written guilty plea agreement informing her of the consequences of her plea and the elements of the offenses. Appellant was personally canvassed by the district court before the guilty plea was accepted. Appellant did not demonstrate that the district court improperly participated in the plea process. Cripps v. State, 122 Nev. 764, 137 P.3d 1187 (2006). Therefore, we conclude that the district court did not err in denying her motion.

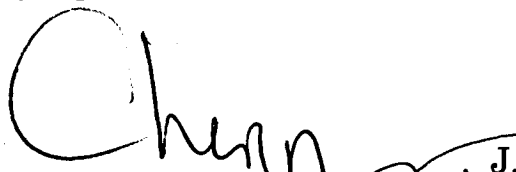
July 8, 2009 Motion for Restitution Hearing


In her motion, appellant claimed that she should not have been ordered to pay \$1,085,120.90 in restitution to the victim company and \$57,541.16 to other victims because there was a civil judgment for the

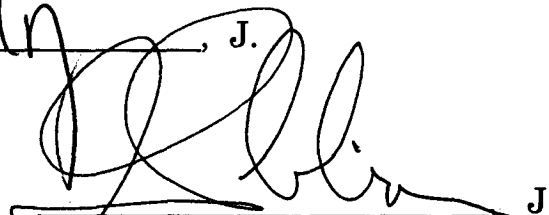
million-dollar amount. The district court determined the motion was without merit because appellant was not subject to duplicate liabilities regarding the million-dollar sum and the other sum was not a duplicate amount. The district court noted that if appellant paid any amount in the civil case, that amount would be credited to her restitution in the criminal case. Any challenge to the amount of restitution was waived for failure to object at the sentencing hearing. Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999). Therefore, we conclude that the district court did not err in denying her motion.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

²To the extent that appellant claimed the district court erred in denying a motion for hearing with master calendar, the district court did not abuse its discretion in denying this motion.

We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Stefany Miley, District Judge
Rachal S. Sanders
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk