

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID JOYCE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59510

**FILED**

JUN 14 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on April 28, 2010, appellant claimed that his counsel was ineffective because he was not provided correct information about a global plea offer and not informed that going to trial was a rejection of a plea offer. In support of this claim, appellant attached a portion of his sentencing transcript in this case where he expressed his belief that a plea offer made before trial in this case was still available after trial and a portion of his sentencing transcript in a different district court case wherein counsel in that case admits that he misrepresented a plea offer to be for 5 to 12-1/2 years, but that appellant had rejected that plea offer and that appellant had rejected the actual plea offer of 5 to 20 years in the other case. Appellant appeared to claim that he was offered a

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<sup>1</sup>This appeal has 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

global plea offer that would result in a total incarceration term of 5 to 12-1/2 years for his then-three pending cases.

The Supreme Court has recognized that defense counsel has a duty to communicate formal plea offers and that to demonstrate prejudice a petitioner must demonstrate a reasonable probability that he would have accepted the more favorable plea offer but for counsel's deficient performance and that the plea would have been entered without the State's canceling it or the district court's refusing to accept it. Missouri v. Frye, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1399, 1409 (2012).

At the evidentiary hearing, the district attorney testified that at no point did she ever extend a global plea offer of 5 to 12-1/2 years to any of appellant's attorneys. Rather, prior to the preliminary hearing, she extended the following offer in appellant's three pending cases: Appellant would plead guilty in two of the three cases, stipulate to small habitual criminal treatment and terms of 5 to 20 years, the sentences between the cases would run concurrently, and the third case would be dismissed. The offer was never accepted and was considered rejected/withdrawn when indictments were returned against appellant in the three pending cases. Trial counsel in this case, Mr. Craig Jorgensen, indicated in his testimony that he never told appellant that a global plea offer of 5 to 12-1/2 years had been made. Trial counsel testified that he did inform appellant about a plea offer made in this case but that appellant rejected the plea offer that was made and insisted on taking this case to trial.<sup>2</sup> Mr. Jorgensen testified that he informed appellant that the plea negotiations would be lost if he went forward with the preliminary hearing and trial. Trial

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<sup>2</sup>No specific testimony was elicited on the terms of the plea offer.

counsel in the other district court case, Mr. Gregory Coyer, admitted he erroneously told appellant that the State had made an offer of 5 to 12-1/2 years but testified that appellant rejected that “offer” and did not reconsider that “offer” until after appellant’s trial was completed in this case.<sup>3</sup> Mr. Coyer testified that appellant refused to take any plea offers prior to going to trial in this case.


Appellant failed to demonstrate that Mr. Jorgensen, trial counsel in this case, misled him about a global plea offer. Mr. Jorgensen testified that he did inform appellant about a plea offer in this case but that appellant rejected that offer. Appellant’s assertion that he did not understand that the plea offer was withdrawn is not supported because he was informed by Mr. Jorgensen that the plea offer would be lost if he went to trial. Nothing in the record supports appellant’s assertion that he believed he could go to trial in this case and still accept a plea offer after the trial in this case. Despite the fact that Mr. Coyer provided misinformation, appellant failed to demonstrate that he was prejudiced as he rejected the more favorable, but mistaken, global plea offer. Appellant further failed to demonstrate prejudice as the prosecutor testified that a global plea offer of 5 to 12-1/2 years had never been made and the global plea that was offered in this case, 5 to 20 years, was considered rejected when appellant did not accept. Thus, appellant failed to demonstrate that the plea offer, based upon misinformation from counsel in a different case, would have been agreed to by the State and allowed by the court had he tried to accept the offer in this case. Therefore, we conclude that

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<sup>3</sup>The actual offer of 5 to 20 years was made prior to the preliminary hearings.

appellant failed to demonstrate that he received ineffective assistance of counsel relating to a global plea offer. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Douglas W. Herndon, District Judge  
David Joyce  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk