

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES WALKER,

No. 35857

Appellant,

vs.

FILED

DEC 17 2001

THE STATE OF NEVADA,

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

Respondent.

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction motion for specific performance of plea agreement and negotiation.

On September 26, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to two consecutive terms of ten years in the Nevada State Prison. Appellant did not file an appeal.

On March 6, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel or to conduct an evidentiary hearing. On November 14, 1996, the district court denied appellant's petition. Appellant did not file an appeal.

On December 4, 1996, appellant filed a proper person motion to correct an illegal sentence in the district court. On December 30, 1996, the district court denied appellant's motion. This court dismissed appellant's subsequent appeal.¹

¹Walker v. State, Docket No. 29853 (Order Dismissing Appeal, January 14, 1999).

On January 25, 2000, appellant filed a proper person post-conviction motion for specific performance of guilty plea agreement and negotiation. The State opposed the motion. Appellant filed a reply. On March 10, 2000, the district court denied appellant's motion. This appeal followed.

In his motion appellant claimed that the district court breached the plea agreement. Specifically, appellant claimed that the district court breached the plea agreement because it sentenced appellant to a greater sentence than was recommended in the guilty plea agreement. Appellant also claimed that the district court failed to inform or give him an opportunity to withdraw his guilty plea, pursuant to former NRS 174.065(3), since the district court did not follow the recommended sentence announced in the plea agreement.²

We conclude that the district court did not err in denying appellant's motion. The district court did not breach the guilty plea agreement by sentencing appellant to serve a greater sentence than was recommended in the guilty plea agreement. The district court was not a party to the guilty plea agreement and not required to impose the sentence recommended by the State or by defense counsel. Moreover, in the guilty plea agreement, appellant was advised that "the Court is not bound by the agreement of the parties and that the matter of sentencing is to be determined solely by the court." During the guilty plea canvass, appellant acknowledged that he was not guaranteed any particular sentence by pleading guilty. He also acknowledged that "the actual sentence would be determined solely by the court and by no one else."


²See 1993 Nev. Stat., ch. 279, § 1, at 828-29 (providing in pertinent part, that if the district court rejected a sentence recommendation from the defendant and the district attorney, the defendant may withdraw his plea).


Furthermore, appellant's reliance upon former NRS 174.065(3) is misplaced because that provision was repealed effective June 24, 1993.³

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. Brent T. Adams, District Judge
Attorney General/Carson City
Washoe County District Attorney
Charles Walker
Washoe County Clerk

³See 1993 Nev. Stat., ch. 279, §§ 1, 2, at 828-29.

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).