IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW GEORGE ASUIT, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 34930
ANDREW GEORGE ASUIT, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 36127

FILED
JUL 18 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from district court orders dismissing appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.[1]

On April 15, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count each of possession of a stolen vehicle, ex-felon in possession of a firearm, eluding a police officer, and burglary in district court case CR98-0044. The district court sentenced appellant to serve various consecutive prison terms totaling approximately 60 to 258 months. This court dismissed appellant's direct appeal, concluding that the district court did not abuse its discretion by imposing consecutive sentences.[2] The remittitur issued on August 19, 1998.

[1]See NRAP 3(b).

[2]Asuit v. State, Docket No. 32342 (Order Dismissing Appeal, July 31, 1998).

01-12177

On March 22, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed the petition in two district court cases, the one discussed above and district court case CR97-2484, which had been dismissed pursuant to the plea negotiations in the district court case discussed above. The State opposed the petitions. 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 September 15, 1999, the district court entered an order dismissing the petition in district court case CR98-0044. Appellant filed a timely notice of appeal, which was docketed in this court as docket number 34930. On May 1, 2000, the district court entered the same order dismissing the petition in district court case CR97-2484. Appellant filed a timely notice of appeal, which was docketed in this court as docket number 36127.

Docket No. 34930

In his petition, appellant first alleged that trial counsel provided ineffective assistance by advising appellant that he would receive concurrent sentences if he pleaded guilty. This claim is belied by the record.

During the arraignment, defense counsel stated that the plea negotiations required the State to concur with the recommendation of the Division of Parole and Probation. Appellant indicated that he agreed with counsel's statement of the negotiations. Moreover, the district court specifically informed appellant that the sentences could be imposed concurrently or consecutively and that the court would make that decision, not the attorneys. Appellant indicated that he understood. Later in the plea canvass, the district court again emphasized that the sentence was up to the court, not

the attorneys. Appellant again indicated that he understood and agreed to "take [his] chances" with the court. Based on the foregoing, we conclude that appellant's claim that he was told that he would be sentenced to concurrent terms is belied by the record and, therefore, appellant was not entitled to relief.[3] Moreover, even assuming that appellant entertained a subjective expectation that he would receive concurrent sentences based on the advice of counsel, his subjective belief as to the potential sentence, which was not supported by a promise from the State or indication by the court, is not sufficient to invalidate the guilty plea.[4]

Appellant next alleged that he received ineffective assistance of counsel because he could not get along with his attorney and was represented by different public defenders at various proceedings. Our review of the record reveals that appellant failed to support this claim with specific factual allegations that, if true, would entitle appellant to relief. Specifically, appellant failed to allege that the various public defenders performed in a deficient manner or that appellant was prejudiced by any alleged deficiencies in their performance.[5] Accordingly, we conclude that the district court did not err in rejecting this claim.

Finally, appellant alleged that Judge Mills Lane was biased against him at sentencing. In support, appellant relies on an interaction between the Judge Lane and one of the victims at the end of the sentencing hearing. At that time, there was some indication that a few weeks prior to the sentencing hearing, the victim had picked up some autographed

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[3]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[4]Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

[5]See Strickland v. Washington, 466 U.S. 668 (1984).

photos of Judge Lane.[6] Based on this, appellant argued that Judge Lane and the victim had a personal relationship that made Judge Lane biased against appellant. We disagree.

As an initial matter, appellant waived this issue by failing to raise it on direct appeal.[7] It also falls outside of the narrow scope of issues that may be raised in a post-conviction challenge to a judgment of conviction based on a guilty plea.[8] Nonetheless, we note that the brief exchange between the sentencing judge and the victim does not indicate that they had a personal relationship that would create an appearance of impropriety or an improper bias against appellant. The entirety of the sentencing transcript indicates that the sentencing judge and the victim had no personal relationship. Accordingly, we conclude that appellant's contention lacks merit and that the district court did not err in rejecting it.

Docket No. 36127

Appellant filed the identical petition in district court case CR97-2484. That case, however, had been dismissed

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[6]In dismissing the petition, a different district court judge accepted the State's argument that appellant misunderstood the transcripts and that the transcripts actually showed that the victim had provided the judge with relevant photos of the victim's family and property at the sentencing hearing. While this is an accurate statement, the transcripts also include the following comment by the victim after the judge had imposed sentence and thanked the victim for coming in and making a statement:

> Well, I thank you. You're the best representative we've ever had in Reno. My wife and I were both born here. I never thought I would be involved with you. We came by three weeks ago to pick up the autographed pictures. I had no idea I'd be in your court, sir, and it's been an honor.

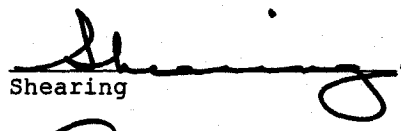
[7]See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[8]See NRS 34.810(1)(a) (providing that only challenges to validity of guilty plea and assistance of counsel may be raised in post-conviction petition challenging a judgment of conviction based on a guilty plea).

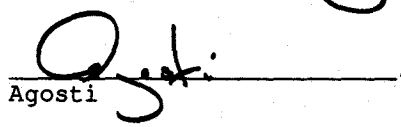
pursuant to plea negotiations in district court case CR98-0044. Appellant was never convicted or sentenced in district court case CR97-2484. Because appellant was not "unlawfully committed, detained, confined or restrained of his liberty" in district court case CR97-2484, he could not prosecute a petition for a writ of habeas corpus in that case.[9] Moreover, because appellant was not in custody pursuant to a judgment of conviction in district court case CR97-2484, the district court could not issue a writ of habeas corpus in that case.[10] Accordingly, we conclude that the district court reached the correct result in dismissing the petition filed in district court case CR97-2484.

Having reviewed the records 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.[11] Accordingly, we

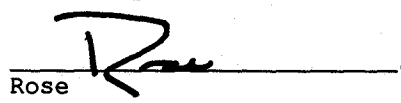
ORDER the judgments of the district court AFFIRMED.[12]



Shearing, J.



Agosti, J.



Rose, J.

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[9]NRS 34.360; see also NRS 34.724(1).

[10]See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999) (holding that district courts may not issue writ of habeas corpus if petitioner filed petition after having completed sentence for challenged conviction).

[11]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Andrew George Asuit
Washoe County Clerk