

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN R. GILL,

No. 36405

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

MAR 22 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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 June 11, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a controlled substance for the purpose of sale. The district court sentenced appellant to serve a minimum term of twelve months to a maximum term of forty-eight months in the Nevada State Prison. This sentence was imposed to run consecutively to any sentence he was presently serving. Appellant did not file a direct appeal.

On May 30, 2000, 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 to represent appellant or to conduct an evidentiary hearing. On June 20, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that the plea agreement was breached because he received consecutive sentences. Appellant believed that under the terms of the plea agreement he was to receive concurrent sentences. Appellant argued that his counsel was ineffective for failing to move to withdraw the plea on the basis of the alleged breach.

Based upon our review of the record, we conclude that the district court did not err in denying these claims.<sup>1</sup> The plea agreement was not breached. Pursuant to negotiations, the State agreed not to object to running appellant's sentence concurrent with the sentences in his other district court cases. At sentencing, the State did not oppose running the sentence concurrently to appellant's other sentences. During the plea canvass and in the written guilty plea agreement, appellant was informed that the decision of whether to impose a consecutive or concurrent sentence was within the sole discretion of the district court. The district court's imposition of a consecutive sentence did not violate the plea agreement. Because the plea agreement was not breached, appellant's counsel was not ineffective for failing to move to withdraw the plea on that basis.<sup>2</sup>

Second, appellant argued that his counsel failed to file a notice of appeal challenging the alleged breach of the plea agreement. Based upon our review of the record, we conclude that the district court did not err in denying this claim. There is no indication in appellant's claim or anywhere in the record on appeal that appellant ever expressed a desire to appeal. Thus, appellant's counsel was not obligated to file an appeal.<sup>3</sup> Further, to the extent that appellant argued that his counsel was ineffective for failing to inform him of his right to appeal, this claim lacked merit. This court has held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" absent extraordinary circumstances.<sup>4</sup> Appellant failed to demonstrate any such extraordinary circumstances in this case,

---

<sup>1</sup>Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>2</sup>Strickland v. Washington, 466 U.S. 668 (1984).

<sup>3</sup>Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

<sup>4</sup>Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

and our review of the record does not reveal any such extraordinary circumstances.

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.  
Young  
Leavitt J.  
Leavitt  
Becker J.  
Becker

cc: Hon. Brent T. Adams, District Judge  
Attorney General  
Washoe County District Attorney  
Kevin R. Gill  
Washoe County Clerk

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).