

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRAL WAYNE BLACKSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70513

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Derral Wayne Blackston appeals from a judgment of conviction entered pursuant to a guilty plea of home invasion and robbery. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.


Blackston claims the district court abused its discretion by deviating from the parties' stipulated sentence without providing him with an opportunity to withdraw his guilty plea. The State asserts Blackston failed to preserve this claim for appeal.

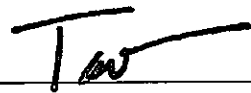
In the written guilty plea agreement, the parties stipulated to a sentence of 24 to 60 months in prison and Blackston acknowledged he was not promised or guaranteed a particular sentence, his sentence would be determined by the district court, and the district court could order the sentences to run concurrently or consecutively. During the plea canvass, Blackston further acknowledged the district court was not bound by the guilty plea agreement, the sentencing stipulation was merely a recommendation, and the district court was not required to follow the recommendation.


110-901494

After the district court sentenced Blackston to two consecutive prison terms of 24 to 60 months, Blackston announced he would like to withdraw his guilty plea and the district court responded, "Okay. Then file the appropriate motion and I'll consider it." Blackston never filed a motion to withdraw his guilty plea in the district court, and, consequently, the district court never rendered a decision as to whether Blackston should be permitted to withdraw his plea. Without a district court decision to review, we decline to address Blackston's claim, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Matsuda & Associates, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk