

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN NEWBERG,

No. 36792

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

FEB 22 2001

ANNETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 9, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of theft. The district court sentenced appellant to serve in the Nevada State Prison a minimum term of twenty-four months to a maximum term of seventy-two months for burglary, and a minimum term of twenty-four months to a maximum term of sixty months for theft, the latter to be served consecutively to the former. Appellant voluntarily dismissed his direct appeal. *Newrberg v. State*, Docket No. 34854 (Order Dismissing Appeal, December 15, 1999).

On August 7, 2000, appellant filed a proper person motion for specific performance of the plea agreement in the district court. The State opposed the motion. On August 23, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant contended that the State breached the plea agreement. Pursuant to the plea agreement, the

State agreed not to oppose concurrent time between the burglary and theft counts. Appellant argued that because he received consecutive time the State breached the plea agreement. Appellant further argued that because the district court did not run his sentences concurrently, the district court must allow him to withdraw his plea pursuant to former NRS 174.065(3).¹ However, appellant believed the harm would best be redressed by running the terms for the burglary and theft counts concurrently.

Our review of the record on appeal reveals that the district court did not err in denying appellant's motion. The State did not breach the plea agreement. Pursuant to the plea agreement, the State agreed not to oppose concurrent time between the burglary and theft counts. During the sentencing hearing, the State did not oppose running the terms for the burglary and theft counts concurrently. Appellant was informed through the written guilty plea agreement that "the sentencing judge has the discretion to order the sentences served concurrently or consecutively." Thus, the State complied with the terms of the plea agreement. Appellant's reliance upon former 174.065(3) is misplaced because that provision was repealed effective June 24, 1993.² Thus, appellant was not entitled to withdraw his plea pursuant to former NRS 174.065(3).

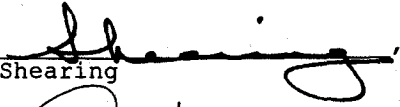
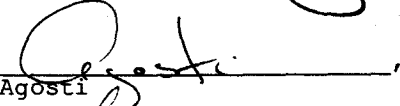
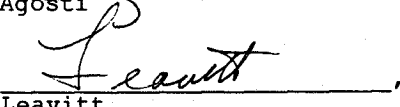
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not

¹See 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).

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

entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


Shearing J.

Agosti J.

Leavitt J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Robin Newberg
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁴We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.