

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ANTHONY WILLIAMS A/K/A
SCOTT ANTHONY MARSHALL,

No. 37389

Appellant,

FILED

vs.

DEC 05 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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 petition for a writ of habeas corpus.

On August 1, 2000, the district court convicted appellant, pursuant to a guilty plea, of robbery, victim 65 years of age, or older. The district court sentenced appellant to serve in the Nevada State Prison a term of twenty-four (24) to seventy-two (72) months plus an equal and consecutive term of twenty-four (24) to seventy-two (72) for the victim 65 years of age or older enhancement, to run concurrently with appellant's sentence imposed in district court case no. C166852. Appellant did not file a direct appeal.

On November 21, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 February 1, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his plea was involuntary and unknowing because the State breached the guilty plea agreement. Specifically, appellant argued that he pleaded guilty believing he would then receive concurrent sentences.

Our review of the record on appeal reveals that the district court did not err in denying appellant relief. Appellant's claim is belied by the record.¹ The State agreed not to oppose concurrent time between appellant's two distinct district court cases. We note that the sentences imposed in the instant case, district court case number C166851, are to run concurrently with the sentence imposed for appellant's separate conviction pursuant to district court case number C166852. The State did not at any time misrepresent to appellant that his robbery sentence would run concurrently with the sentence imposed for the enhancement.² Moreover, both appellant's plea canvass and his guilty plea agreement informed him that the sentence imposed for the enhancement conviction would run consecutively to the sentence imposed for the underlying robbery conviction.

Appellant next appeared to argue that insufficient evidence supported his enhancement conviction. Specifically, appellant contended that the "[c]ourt never asked [appellant] if he injured . . . the victim," nor, appellant noted, did he ever "admit any injury to the alleged victim over the age of 65 years." Again, appellant's claim is without merit. First, this court has previously held that a plea of guilty waives all claims of error that occurred prior to the plea unless related to the voluntariness of the

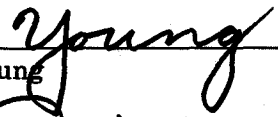
¹Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

²See NRS 193.167(1) providing, in relevant part, that "any person who commits the crime of: (f) robbery . . . against any person 65 years of age or older shall be punished by imprisonment . . . for a term equal to and in addition to the term . . . prescribed by statute for the crime. The sentence prescribed by this subsection must run consecutively with the sentence prescribed by statute for the crime. (Emphasis added.)

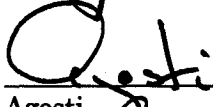
plea or the effectiveness of counsel.³ Second, actual bodily injury to the victim aged 65 years or older is not required under NRS 193.167. Furthermore, appellant admitted that the victim of the instant offense was 65 years of age or older and that appellant accomplished the robbery by force or fear of injury to the victim. Thus, it is clear from the record that sufficient evidence supported the enhancement.

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.



Young J.



Agosti J.



Leavitt J.

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Scott Anthony Williams
Clark County Clerk

³See Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996).

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