

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARCHIE JOE MORRISON,

No. 37549

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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 1, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a minimum term of seventy-two months to a maximum term of one hundred and eighty months for robbery and an equal and consecutive term for the deadly weapon enhancement. No direct appeal was taken.

On November 27, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a motion for the appointment of counsel in the district court. The State opposed the petition and motion. 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 March 2, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that the plea agreement was breached. Appellant argued that it was his understanding that he would receive a term of twenty-four months to one hundred and twenty months pursuant to the negotiations. Appellant argued that it was improper for the State to make no recommendation at sentencing; rather, appellant argued that the State was bound to recommend a sentence that fell at the lower end of the sentencing range.

We conclude that the district court did not err in denying this claim. Appellant waived this claim by failing to raise it on direct appeal

and failing to demonstrate good cause and prejudice for his failure to raise this claim on direct appeal.¹ To the extent that appellant is challenging the voluntary and knowing nature of his plea, appellant's claim lacks merit.² The plea agreement was not breached; the State was not bound to recommend a sentence that fell at the lower end of the sentencing range. Pursuant to the negotiations, the State agreed to retain the right to argue at sentencing. Appellant's trial counsel recited the negotiations for the district court, and appellant affirmatively indicated that he understood the negotiations. Appellant was informed during the plea canvass and in the written guilty plea agreement that he faced a potential term of two to fifteen years for robbery and an equal and consecutive term for the deadly weapon enhancement. Appellant further acknowledged during the plea canvass that the matter of sentencing was entirely within the district court's discretion. Thus, appellant failed to demonstrate that his plea was involuntary or unknowing.

Second, appellant argued that his trial counsel was ineffective in failing to inform the district court of the terms of the plea agreement and in failing to litigate the matter in a professional manner. Appellant failed to provide specific facts in support of this allegation.³ Further, appellant's claim that his trial counsel failed to inform the district court of the terms of the plea agreement is belied by the record on appeal.⁴ Appellant's trial counsel informed the district court that in exchange for appellant's guilty plea to robbery with the use of a deadly weapon, the State had agreed to dismiss other charges and retained the right to argue at sentencing. The negotiations were also set forth in the written guilty plea agreement. Finally, appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.⁵ Therefore, we conclude that the district court did not err in denying these claims.

¹Franklin 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).

²See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

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

⁴See id.

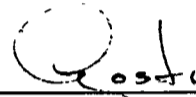
⁵See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

Third, appellant argued that his trial counsel was ineffective in failing to inform him of his right to a direct appeal from a guilty plea. The written guilty plea agreement informed appellant of his limited right to a direct appeal.⁶ Thus, we conclude that appellant failed to demonstrate that he was prejudiced by any alleged deficiency of counsel.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Archie Joe Morrison
Clark County Clerk

⁶See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

⁷See id.; see also Strickland v. Washington, 466 U.S. 668 (1984).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.