

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN STENNES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37579

FILED

MAR 03 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On September 17, 1999, the district court convicted appellant Steven Stennes, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14 years. The district court sentenced Stennes to serve 20-240 months in prison.<sup>1</sup> Stennes did not pursue a direct appeal.

On September 14, 2000, Stennes 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 NRS 34.770, the district court declined to appoint counsel to represent Stennes or to conduct an evidentiary hearing. On November 16, 2000, the district court denied the petition. This appeal followed.

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<sup>1</sup>Although the judgment of conviction states that Stennes' minimum sentence is 20 months, both the transcript of the sentencing hearing and the district court's order denying his habeas petition indicate that the minimum sentence imposed was 24 months. Also, the written plea agreement indicates that the minimum sentence imposed would not be less than 24 months. See NRS 193.330(1)(a)(1); NRS 201.230.

In denying the petition, the district court first concluded that it was not timely filed and that Stennes had failed to demonstrate good cause and prejudice. Based on our review of the record, we conclude that the district court erred in this respect. NRS 34.726(1) provides that a post-conviction petition must be filed within one year from entry of the judgment of conviction or, if a timely appeal is taken, within one year from this court's issuance of its remittitur.<sup>2</sup> The district court received and filed Stennes' petition on September 14, 2000, within one year after entry of the judgment of conviction on September 14, 1999. Accordingly, Stennes timely filed his petition, and the district court erred to the extent it concluded otherwise. Nonetheless, the district court also addressed the merits of the claims raised in Stennes' petition and determined that they were without merit. We agree.

First, Stennes contends that his trial counsel was ineffective because his guilty plea was not knowingly and voluntarily entered. Stennes argues that his trial counsel and the prosecutor misrepresented the plea negotiations. Specifically, Stennes alleges that he was promised both probation and dismissal of the charges in district court case no. C156787; therefore, he asks this court to order enforcement of the plea agreement.

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<sup>2</sup>See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998); see also Gonzales v. State, 118 Nev. \_\_\_, 53 P.3d 901 (2002).

Stennes' claim is unsubstantiated and belied by the record.<sup>3</sup> The written plea agreement provides that in exchange for Stennes' guilty plea, the State "agreed to retain the right to argue at sentencing, but will make no recommendation for concurrent or consecutive time with case C156787." The written plea agreement explicitly refers to sentencing in the other district court case; it does not state that the other case would be dismissed in exchange for Stennes' guilty plea in this case. The negotiations set forth in the written plea agreement are consistent with those presented to the justice court when Stennes waived his right to a preliminary hearing in both cases.

In his petition, Stennes apparently relied on the district court minutes for the arraignment to support his argument that the other district court case would be dismissed pursuant to the negotiations in this case. The relevant minute entry states the negotiations as follows: "Defendant will plead to the information; the State retains the right to argue at sentencing, agrees to make no recommendation for concurrent or consecutive time and will dismiss case C156787." That entry appears to be a clerical error. The transcript of the arraignment reveals that the attorneys represented the negotiations consistently with those set forth in the written plea agreement, and there was no discussion whatsoever

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<sup>3</sup>See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that petitioner not entitled to evidentiary hearing where factual allegations are belied or repelled by the record); see also NRS 34.770(1) (judge shall determine necessity of an evidentiary hearing).

regarding the dismissal of the other case.<sup>4</sup> Therefore, it is clear from the totality of the circumstances that Stennes understood the plea negotiations before entering his guilty plea.<sup>5</sup>

Second, Stennes contends that trial counsel provided ineffective assistance at sentencing by failing to present favorable psychological evaluations and character letters from his family and members of the community. At sentencing, Stennes argued for the granting of probation, and in his petition claimed that he was prejudiced by his counsel's failure in this regard by the imposition of a harsher sentence.

This claim is also belied by the record and without merit.<sup>6</sup> Our review of the sentencing hearing transcript reveals that the district court judge was, in fact, presented with favorable psychological evaluations indicating that Stennes was "a low-risk to re-offend," that "he's doing all sorts of counselling," and that he was recommended as a candidate for supervision. The district court was also made aware of the abuse Stennes experienced as a child. Nevertheless, the district court made it clear that it was basing its sentencing decision on the gravity of the instant crime, and the length of time Stennes was involved in the abusive behavior.

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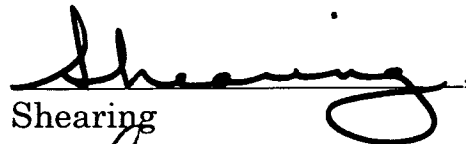
<sup>4</sup>In district court case no. C156787, Stennes also pleaded guilty to one count of attempted lewdness with a child under the age of 14 years; and, he was sentenced to serve a concurrent prison term of 48-240 months.


<sup>5</sup>See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225.


<sup>6</sup>See id.

Having considered Stennes' arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Jackie Glass, District Judge  
David M. Schieck  
Steven Stennes  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>7</sup>We have considered all proper person documents received in this matter and conclude that the relief requested is not warranted.