

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARSHALL J. ANTHONY,

No. 37657

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAY 29 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of two counts of burglary. The district court sentenced appellant to serve two consecutive prison terms of 48 to 120 months and ordered him to pay \$8,025.00 in restitution.

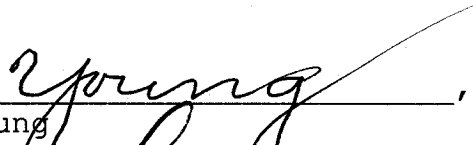
Appellant filed a proper person motion to correct illegal sentence, which was denied by the district court. Appellant then filed a post-conviction petition for a writ of habeas corpus, alleging ineffective assistance of counsel. Thereafter, in appellant's response to the State's motion to dismiss, appellant abandoned his request to withdraw his guilty plea based on ineffective assistance of counsel. Instead, appellant requested a new sentencing hearing wherein the district court would reconsider his sentence in light of appellant's contention that "he mustered the ability to pay restitution prior to sentencing because his attorney promised him probation." The district court denied appellant's request for a new sentencing hearing.


Appellant contends that the district court abused its discretion in sentencing appellant too harshly. We decline to consider appellant's contention because it should


have been raised on direct appeal<sup>1</sup> and because it falls outside of the scope of a post-conviction petition challenging a conviction based on a guilty plea.<sup>2</sup> Further, to the extent that appellant is arguing that his guilty plea was not knowing because his attorney promised him probation provided he made restitution, we conclude that appellant's argument lacks merit.<sup>3</sup>

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Janet J. Berry, District Judge  
Attorney General  
Washoe County District Attorney  
Scott W. Edwards  
Washoe County Clerk

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<sup>1</sup>See Franklin 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).

<sup>2</sup>See NRS 34.810 (1)(a).

<sup>3</sup>See State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (reaffirming that the "'subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing'" (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975))).