

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY EUGENE HAMPTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37806

FILED

NOV 06 2002

ORDER AFFIRMING IN PART, VACATING  
IN PART AND REMANDING

CLERK OF SUPREME COURT  
STEPHEN R. RILEY  
DEPUTY CLERK

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 September 11, 1998, the district court convicted appellant, pursuant to a guilty plea, of two counts of felony burglary. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. The sentence on the second burglary count was ordered to run consecutive to a sentence imposed in another district court case, CR2745. Appellant did not file a direct appeal.

On July 27, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On December 21, 1999, appellant filed a proper person document labeled "petition for writ of habeas corpus and petition/motion for withdrawal of guilty plea." 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 April 17, 2001, the

district court entered an order denying appellant's various petitions and motions.<sup>1</sup> This appeal followed.

In his July 1999 petition, appellant claimed that his counsel was ineffective and had subjected him to "double jeopardy" by failing to investigate the terms of the plea bargain in another case, CR2745.<sup>2</sup> Appellant claimed that the plea agreement in the other case provided that in exchange for appellant's plea of guilty in that case to attempted burglary, the State would not prosecute appellant in the instant case. The record belies appellant's contention. At the hearing in the other case where appellant waived his right to a preliminary hearing, the prosecutor stated on the record that, in exchange for appellant's plea of guilty to attempted burglary, the State would not seek to enhance appellant's sentence as a habitual criminal and would pursue no other charge from

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<sup>1</sup>In prior proceedings, the district court had entered orders denying the relief requested in appellant's filings of December 1999 on the ground that those requests for relief were procedurally barred. Appellant appealed the district court's denial of relief, and on appeal, this court reversed and remanded because the district court had never resolved appellant's original petition of July 27, 1999, and its failure to do so could have constituted sufficient cause to overcome any procedural bars. See Hampton v. State, Docket No. 35517 (Order of Reversal and Remand, April 10, 2001). The remittitur in that appeal issued on May 8, 2001.

<sup>2</sup>To the extent that appellant raised any of the issues underlying his claim of ineffective assistance of counsel as independent constitutional violations, they are waived. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). We address appellant's claim only as it relates to the effective assistance of counsel.

Nye County Sheriff's report case number 97-1473. The State adhered to these terms. The charges in the instant case arose from separate, unrelated incidents documented in Nye County Sheriff's report case number 97-1474. Therefore, we conclude that the district court did not err in rejecting appellant's claims of ineffective assistance in this regard and in concluding that the State did not breach any plea agreement by filing charges against appellant in the instant case. Accordingly, we affirm that portion of the district court's order of April 17, 2001, denying appellant's July 1999 petition.

At the time the district court entered its order of April 17, 2001, however, the district court had not reacquired jurisdiction to resolve the claims presented in appellant's petition and motion of December 21, 1999. As noted above, appellant had previously appealed to this court from the district court's earlier denial of the relief appellant requested in the matters he filed in December 1999. On April 10, 2001, this court reversed the district court's denial of relief and remanded those matters to the district court. The remittitur in that appeal did not issue until May 8, 2001. As this court held in Buffington v. State, a district court lacks jurisdiction to act with respect to a matter that has been appealed to this court until such time as the remittitur is issued, and the district court thereby regains jurisdiction in the premises.<sup>3</sup> Thus, we must vacate that portion of the district court's order of April 17, 2001, purporting to resolve

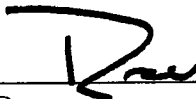
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<sup>3</sup>See Buffington v. State, 110 Nev. 124, 868 P.2d 643 (1994).

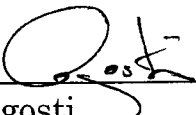
appellant's petition and motion of December 1999 because the district court had not regained jurisdiction at that time to resolve those matters.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART, AND WE REMAND appellant's December 1999 requests for relief for further proceedings consistent with this decision.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. John P. Davis, District Judge  
Attorney General/Carson City  
Nye County District Attorney/Tonopah  
Ricky Eugene Hampton  
Nye County Clerk