

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT STEVEN BUFF,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
E.K. MCDANIEL,  
Respondent.

No. 38161

FILED

APR 30 2002

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 Robert Steven Buff's post-conviction petition for a writ of habeas corpus.

On November 9, 1995, Buff was convicted, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced Buff to serve two consecutive prison terms of life without the possibility of parole. Buff filed a direct appeal, alleging numerous instances of error. This court affirmed Buff's conviction, but reversed the deadly weapon enhancement and remanded to the district court on the issue of the applicability of that enhancement.<sup>1</sup> Upon remand, the State elected not to prosecute the issue of the applicability of the deadly weapon enhancement. Consequently, the district court entered an amended judgment of conviction, on May 4, 1999,

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<sup>1</sup>Buff v. State, 114 Nev. 1237, 970 P.2d 143 (1998).

striking the deadly weapon enhancement and the consecutive life prison term. Buff did not appeal from the amended judgment of conviction.

On January 4, 2000, Buff filed a proper person post-conviction petition for a writ of habeas corpus, alleging that he had been “grievously wronged” because his co-defendant was allowed to plead to second-degree murder and received a more lenient sentence. The State opposed the petition. The district court appointed counsel, and Buff filed a supplemental petition. After conducting an evidentiary hearing, the district court denied the petition. Buff filed the instant appeal.

Buff contends that the district court erred in denying his petition because he is entitled to have his conviction and sentence modified to be identical to that of his co-defendant since they were equally culpable in the victim’s murder. Buff cites this court’s holding in Martinez v. State<sup>2</sup> in support of his contention “that joint participation in criminal conduct justifies similar sentences.” We conclude that Buff’s contention lacks merit.

Although we noted in Martinez that joint participation in criminal conduct may “justify” similar sentences, Martinez does not stand for the proposition that such sentences are mandated.<sup>3</sup> To the contrary, in Martinez, we recognized that “[t]he Eighth Amendment requires that defendants be sentenced individually, taking into account the individual,

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<sup>2</sup>114 Nev. 735, 964 P.2d at 143.

<sup>3</sup>Id. at 737, 964 P.2d at 145.

as well as the charged crime.”<sup>4</sup> Moreover, it is generally recognized that “there is no constitutional right to plea bargain,” and the prosecutor need not offer a plea to any or all of the defendants charged with participating in a joint crime.<sup>5</sup> We therefore conclude that the fact that Buff’s co-defendant pleaded guilty to second-degree murder has no effect on Buff’s first-degree murder conviction or accompanying sentence.

Buff also contends that the premeditation instruction given at his trial blurred the distinction between deliberation and meditation, and thus reversal of his conviction is warranted.<sup>6</sup> This court has already considered and rejected that argument in Buff’s direct appeal, and relitigation of the issue is therefore barred by the doctrine of the law of the case.<sup>7</sup> To the extent that Buff argues that this court’s holding in Byford v. State<sup>8</sup> warrants reconsideration of the issue, we reject that argument.

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<sup>4</sup>Id. (emphasis added).

<sup>5</sup>Weatherford v. Bursey, 429 U.S. 545, 561 (1977).

<sup>6</sup>At trial and on appeal, Buff objected to the language “successive thoughts of the mind” in the jury instruction defining premeditation.

<sup>7</sup>See Valerio v. State, 112 Nev. 383, 915 P.2d 874 (1996).

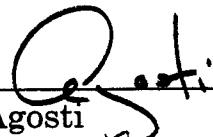
<sup>8</sup>116 Nev. 215, 994 P.2d 700 (2000), cert. denied, 531 U.S. 1016 (2000).

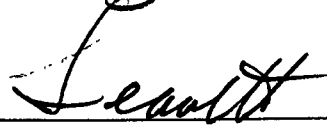
Byford has no retroactive application, and therefore does not apply to Buff's trial.<sup>9</sup>

Having considered Buff's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Steven P. Elliott, District Judge  
Scott W. Edwards  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>9</sup>See Garner v. State, 116 Nev. 770, 6 P.3d 1013 (2000), cert. denied, 532 U.S. 929 (2001).