IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JESSIE JONES, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 38655
CHARLES JESSIE JONES, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 38656

FILED

JUL 03 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.[1]

On April 11, 2001, the district court convicted appellant, pursuant to no contest pleas, of one count of possession of a controlled substance in district court case number CR001960, and one count of possession of a controlled substance in district court case number CR002241. The district court sentenced appellant to serve a term of nineteen months to forty-eight months in the Nevada State Prison in each district court case. The district court imposed the terms for each district court case to run consecutively to one another. This court affirmed the judgments of conviction.[2]

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[1]NRAP 3(b).

[2]Jones v. State, Docket Nos. 37853, 37854 (Order of Affirmance, July 12, 2001).

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On August 6, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court designating both district court cases. Appellant filed a memorandum in support of his 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 September 20, 2001, the district court denied appellant's petition. These appeals followed.

In his petition, appellant first contended that his attorney ignored appellant's desire to withdraw his plea. This claim is belied by the record on appeal.[3] During sentencing, appellant's attorney informed the district court of appellant's desire to withdraw his plea. Therefore, appellant was not entitled to relief on this claim.

Second, appellant claimed that his attorney was ineffective for ignoring appellant's request to continue court proceedings because he was given the wrong medications by a nurse in the county jail. We conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.[4] Appellant failed to provide any facts supporting this claim. Appellant failed to indicate what court proceedings should have been continued and how a continuation would have altered the outcome of the proceedings. To the extent that appellant believed that his plea canvass hearing should have been continued, we note that appellant himself told the court that he wished to proceed with the plea canvass despite the fact

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

[4]Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

that appellant had complaints about his health.[5] Therefore, appellant was not entitled to relief on this claim.

Third, appellant claimed that his attorney ignored him, would not talk to him about his case, and failed to pursue requested issues. Appellant failed to demonstrate that his attorney was ineffective in this regard.[6] Appellant failed to indicate what his attorney should have discussed with him. Appellant failed to indicate the requested issues that his attorney should have pursued. Therefore, appellant was not entitled to relief on this claim.

Fourth, appellant claimed that his attorney was ineffective for failing to argue for concurrent sentences at sentencing. Appellant failed to demonstrate that his attorney was ineffective because he failed to demonstrate any prejudice.[7] The negotiations provided that the underlying sentences for the convictions would run consecutively to each other but that any probationary terms would run concurrently. Because appellant was arrested for a new offense while he was awaiting sentencing, pursuant to the plea agreement, the State did not have an obligation to recommend probation. Appellant's attorney asked the

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[5]During the plea canvass, appellant stated, "My chest hurt a lot. It ain't my heart." The district court asked appellant if he wished to stop the proceedings and appellant answered, "No." Appellant's attorney then informed the district court, "[appellant] suffered a seizure related to his asthma. If you'll notice, he's got a pretty large scar in around his chest area. And I think that's also the cause of some of the pain he's experiencing today."

[6]Hill v. Lockhart, 474 U.S. 52; Kirksey, 112 Nev. 980, 923 P.2d 1102.

[7]Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

district court to show leniency. Therefore, appellant is not entitled to relief on this claim.

Fifth, appellant claimed that his attorney was ineffective for allowing him to receive excessive sentences. We conclude that appellant failed to demonstrate that his counsel was ineffective in this regard. Appellant's sentences were facially legal.[8] Appellant was adequately informed of the potential penalties during the plea canvass. Appellant was further informed that the sentence for each district court case could be imposed to run consecutively. Finally, this court determined on direct appeal that there was no breach of the plea agreement. Therefore, we conclude that appellant is not entitled to relief on this claim.

Sixth, appellant claimed: (1) his right to compulsory process and his due process rights were violated because his attorney failed to represent appellant's best interests, (2) his due process rights and right to the assistance of counsel was violated because his attorney's actions and performance amounted to a mere mockery of representation, (3) he was coached into pleading no contest. Appellant failed to provide any facts in support of these claims.[9] Therefore, appellant was not entitled to relief.

Seventh, appellant claimed that his plea was involuntary because he believed that he would receive a sentence of probation. Appellant failed to demonstrate that his plea was involuntary or unknowing.[10] Appellant was adequately informed of the potential penalties during the plea canvass. In exchange for his pleas, the State

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[8]NRS 453.336; NRS 193.130; NRS 176A.100.

[9]Hargrove, 100 Nev. 498, 686 P.2d 222.

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

agreed to probation in both cases. Appellant, however, was informed in the written plea agreement that a new arrest for a violation of law would allow the State to withdraw from the plea agreement or allow the State to be free to argue for any sentence. Appellant was arrested for a new offense while awaiting sentencing. The Department of Parole and Probation recommended that appellant receive consecutive terms of imprisonment because of his criminal record. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[11] Therefore, appellant was not entitled to relief.

Finally, appellant claimed: (1) the district court erroneously sentenced him based upon his prior criminal record, (2) the district court failed to abide by the negotiations in sentencing appellant, (3) the district court improperly stated at sentencing that prison would provide appellant with a warm place to stay and three meals a day, (4) the district court erroneously refused to allow him to withdraw his plea, (5) his sentences amounted to cruel and unusual punishment, and (6) his sentences were illegal because he should only have received a sentence of one year in the county jail for commission of a Category E Felony. These claims fell outside the scope of a post-conviction petition for a writ of habeas corpus challenging a conviction based upon a guilty plea.[12] Further, appellant

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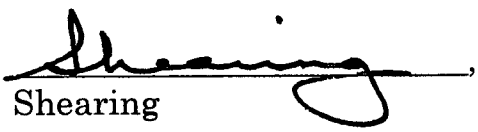
[11]Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

[12]NRS 34.810(1)(a) (providing that the court shall dismiss a petition if the court determines that the petitioner's conviction was upon a plea of guilty and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel).

waived these claims by failing to raise them on direct appeal.[13] Therefore, appellant is not entitled to relief.

Having reviewed the records 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.[14] Accordingly, we

ORDER the judgments of the district court AFFIRMED.



_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Charles Jessie Jones
Washoe District Court Clerk

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[13]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).

[14]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).