IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD EARL WILLIAMS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40340
RONALD EARL WILLIAMS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40341
RONALD EARL WILLIAMS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 40343

FILED

OCT 15 2003

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

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court denying appellant Ronald E. Williams' post-conviction petitions for writs of habeas corpus.

Williams entered a package plea to resolve three unrelated district court cases: C156080, C161669, and C148306. Each case was pending before a different district court judge in Clark County District Court, and Williams had different appointed counsel in each case. Pursuant to the package plea agreement, the State retained the right to argue at the rendition of sentence in each case, but agreed not to oppose Williams' request that the sentences imposed in the three cases run concurrently.

On December 9, 1999, Williams pleaded guilty to one count of transporting a controlled substance in district court case no. C156080.

District Court Judge Bonaventure court sentenced Williams to serve a prison term of 12 to 30 months to run concurrently with district court case no. C148306.[1] Williams did not file a direct appeal. On February 12, 2001, Williams filed a proper person post-conviction petition for a writ of habeas corpus in district court case no. C148306. The State opposed the petition.

On December 15, 1999, Williams entered an Alford plea[2] to one count of discharging a firearm at a vehicle in district court case no. C161669. District Court Judge Hardcastle sentenced Williams to serve a prison term of 24 to 60 months to run consecutively to district court case no. C156080. Williams did not file a direct appeal. On January 8, 2001, Williams filed a proper person post-conviction petition for a writ of habeas corpus in district court case no. C161669. The State opposed the petition.

On July 31, 2000, Williams entered an Alford plea to one count of statutory sexual seduction in district court case no. C148306. District Court Judge Sobel sentenced Williams to serve a prison term of 24 to 60 months to run consecutively to district court case nos. C156080 and C161669. Williams filed a proper person notice of appeal, which this court

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[1]Despite the language in the judgment of conviction, we note that the sentence in district court case no. C156080 is actually running consecutively because, at the subsequent sentencing proceeding in district court case no. C148306, the district court ordered the sentence to run consecutively to the sentence imposed in district court case no. C156080. See NRS 176.035(1) ("whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed") (emphasis added).

[2]North Carolina v. Alford, 400 U.S. 25 (1970).

dismissed as untimely.[3] On February 14, 2001, Williams filed a proper person post-conviction petition for a writ of habeas corpus in district court case no. C156080. The State opposed the petition.

In March 2001, the district court appointed counsel Gary Gowen to represent Williams on all three cases. Counsel filed a supplement to the petition in district court case no. C166069. The supplement filed by counsel also addressed the validity of Williams' pleas and the effectiveness of trial counsel in district court case nos. C148306 and C156080. After hearing arguments from counsel, the district court entered a single order denying Williams' petitions in district court case nos. C156080, C161669, and C148306. Williams filed a notice of appeal in each case, which were docketed in this court as Docket Nos. 40340, 40341, and 40343, respectively. This court consolidated the appeals.

Preliminarily, we note that the habeas petitions filed in district court case nos. C156080 and C161669 were untimely because they were not filed within one year of the judgments of conviction.[4] Because Williams failed to establish good cause for the untimely petitions, they were procedurally barred, and we explicitly conclude that those petitions should have been denied on that basis.[5] We note, however, that the district court correctly determined that the claims raised in those petitions lacked merit, and we affirm the district court's ruling on that separate,

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[3]Williams v. State, Docket No. 36744 (Order Dismissing Appeal, November 15, 2000).

[4]See NRS 34.726(1).

[5]See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied "clearly and expressly" on procedural bar) (citation omitted).

independent ground.[6] Additionally, we note that Williams raised similar claims that were timely in the habeas petition filed in district court case no. C148306.

On appeal, Williams contends that his guilty and Alford pleas were not knowing and voluntary because he "rightfully expected to be sentenced to concurrent time in all three [cases]." We conclude that the district court did not err in rejecting Williams' claim because it was belied by the record.[7]

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[8] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[9] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[10]

The totality of the circumstances indicates that Williams' pleas were knowing and voluntary. The signed written plea agreements in all three cases state: "I understand that if one or more sentence of imprisonment is imposed and I am eligible to serve the sentences

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[6]Id. at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, "a state court need not fear reaching the merits of a federal claim in an alternative holding").

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

[8]Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[9]Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

[10]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively." Similarly, the written plea agreements provided that: "I have not been promised or guaranteed any particular sentence by anyone."

Further, at the sentencing proceeding before Judge Sobel, Williams indicated that he understood the district court had discretion with regard to sentencing, stating: "I come here today . . . just to settle everything. But I'm hoping to receive concurrent time which was just explained to me what I would receive, but I know it's up to you to judge matters as you see fit. So, I'm willing to accept whatever sentence you impose on me today." (Emphasis added.) Similarly, at the sentencing proceeding before Judge Hardcastle, when Williams requested concurrent sentences, Judge Hardcastle reminded Williams "at the time I took your plea you understood the matter of sentencing was up to the Court and no one else." Although William alleges that when he entered his pleas he believed he would receive concurrent sentences, the "'mere 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.'"[11] Accordingly, we conclude that the district court did not abuse its discretion in ruling that Williams' guilty and Alford pleas were knowing and voluntary.

Second, in his petitions, Williams raised several allegations of ineffective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must show both that counsel's performance fell below

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[11]State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

an objective standard of reasonableness and that the deficient performance prejudiced the defense.[12] Further, a petitioner who has entered a guilty plea must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.[13]

Williams contends that his trial counsel were ineffective for failing to negotiate conditional pleas providing that Williams could withdraw his pleas if the district courts did not order the sentences in each case to run concurrently.[14] We conclude that the district court did not err in rejecting Williams' claim. Preliminarily, we note that the plea negotiations were entirely favorable to Williams because the State dropped several criminal counts filed against Williams and agreed not to oppose Williams' requests for concurrent time.[15] Moreover, Williams has failed to allege that the State offered or would have offered him more favorable plea negotiations, and there is no indication in the record that

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

[13]See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

[14]Williams also contends that trial counsel were ineffective in failing to prove prior convictions for enhancement purposes in accordance with NRS 453.336. We conclude that the district court did not err in rejecting that claim because Williams was not sentenced for an enhancement pursuant to NRS 453.336.

[15]In district court case no. C148306, the State agreed to drop one count of statutory sexual seduction. In district court case no. C156080, the State agreed to drop one count of possession of a controlled substance with the intent to sell.

the State would have agreed to a conditional plea.[16] Finally, because Williams accepted the non-conditional plea package agreement, William has failed to show that he would have insisted on going to trial were it not for his trial counsels' failure to negotiate conditional pleas.

Williams next contends that his trial counsel were ineffective for failing to move to transfer all three cases to Judge Bonaventure, after he expressed a willingness to impose concurrent sentences. The district court rejected Williams' claim, finding that he failed to show that Williams' request to consolidate the cases would have been granted. We conclude the district court did not err in rejecting Williams' claim. At the time Williams learned that Judge Bonaventure was not opposed to concurrent sentencing, he had already entered his guilty and Alford pleas in the other departments. Thus, a motion to consolidate the cases would have likely been rejected as untimely. Accordingly, Williams has failed to show that his trial counsel were ineffective in this regard.

Williams also contends that his trial counsel were ineffective in failing to immediately move to withdraw Williams' pleas after the district courts declined to impose concurrent sentences. According to Williams, it is customary "[i]n most of those rare cases where the sentencing judges elects not to follow the 'understanding' of the parties [for] the sentencing judge [to] offer the defendant the opportunity to

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[16]We note that Williams had a substantial criminal history, which included prior convictions for attempted murder, battery with a deadly weapon, domestic violence, first-degree kidnapping, sexual assault, trafficking in a controlled substance, and burglary.

withdraw his plea."[17] We conclude that the district court did not err in rejecting Williams' contention.

Even assuming trial counsel acted deficiently in failing to move to withdraw Williams' pleas, Williams failed to demonstrate he was prejudiced by the deficient conduct. In a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not entered knowingly and intelligently.[18] Here, because Williams' guilty and Alford pleas were knowing and intelligent, Williams has failed to show that his motions to withdraw his guilty and Alford pleas would have been granted.

Finally, Williams contends that Judge Hardcastle and Judge Sobel improperly sentenced him to consecutive sentences because there was a clear understanding between the parties that Williams would receive concurrent prison time. We decline to consider Williams' challenge to the validity of his sentences. William waived this claim by failing to raise it on direct appeal from the judgment of conviction.[19] Nonetheless, we note that the consecutive sentences imposed by Judges Sobel and Hardcastle were not improper merely because they disregarded the alleged understanding of the parties with regard to sentencing. In fact,

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[17]Both Judges Hardcastle and Sobel stated that they were not imposing concurrent sentences because of Williams' substantial criminal history.

[18]See Bryant, 102 Nev. at 272, 721 P.2d at 368.

[19]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).

this court has recognized that "trial judges need not accept sentence bargains . . . because they offend the judicial prerogative to sentence."[20]

Having considered Williams' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.[21]

Becker, J.
Becker

Shearing, J.
Shearing

Gibbons, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[20]Sandy v. District Court, 113 Nev. 435, 440 n.1, 935 P.2d 1148, 1151 n.1 (1997).

[21]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.