

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNNETTE FLEMING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40694

FILED

NOV 14 2003

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus:

On November 7, 2001, the district court convicted appellant, pursuant to a guilty plea, of robbery. The district court sentenced appellant to serve a term of twenty-four to one hundred-twenty months in the Nevada State Prison. Appellant did not file a direct appeal.

On September 9, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 December 31, 2002, the district court dismissed appellant's petition. This appeal followed.

In her petition, appellant contended that: (1) her co-defendant received a sentence of only six months for the same offense, although she had a more extensive criminal history than appellant and was involved in an altercation with the victim, and (2) the pre-sentence investigation report (PSI) erroneously stated that there was not a co-defendant. NRS 34.810(1)(a) provides that the court shall dismiss a petition for a writ of

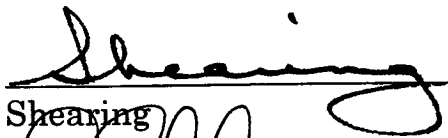
habeas corpus if the petitioner's conviction was the result of a guilty plea, and the petition is not based on a challenge that the plea was involuntarily or unknowingly entered or the plea was entered without the effective assistance of counsel. These claims, therefore, fall outside the scope of a post-conviction habeas corpus petition.

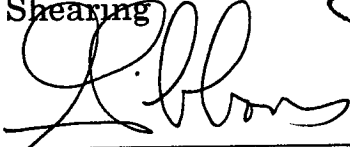
Appellant next contended that she was sentenced the same day she entered her guilty plea, despite her request to be sentenced at a later date. Our review of the record, however, reveals that she pled guilty on September 11, 2001 to the charge at issue, and was not sentenced until October 30, 2001. Thus, the record belies appellant's allegation.¹

Having reviewed the record 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.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

¹See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

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

³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Valorie Vega, District Judge
Lynnette Fleming
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk