IN THE SUPREME COURT OF THE STATE OF NEVADA

LOU MARQUETTE WILLIAMS A/K/A
LOU M. WILLIAMS, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41286

FILED

JUN 25 2004

DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is a proper person appeal from an order denying appellant Lou Williams' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On January 15, 2002, the district court convicted Williams, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced Williams to serve four consecutive terms of 24 to 120 months in the Nevada State Prison. The district court ordered that Williams receive 150 days credit for time served. No direct appeal was taken.

On January 15, 2003, Williams filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Williams or to conduct an evidentiary hearing. On March 17, 2003, the district court denied Williams' petition. This appeal follows.

04-11637

In his petition, Williams raised two claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.[1] To show prejudice, a petitioner who has entered a guilty plea must demonstrate "'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'"[2] The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.[3]

First, Williams claimed that trial counsel was ineffective for allowing the terms of the plea agreement to be changed without his knowledge or consent. Specifically, Williams contended that he agreed to plead guilty to two counts of robbery with the use of a deadly weapon in exchange for concurrent sentences and that the plea agreement was subsequently changed to provide for consecutive sentences. Based on our review of the record on appeal, we conclude that the district did not err in denying this claim. During the plea canvass, the State noted that there was an error in the written guilty plea agreement and moved to amend the agreement by interlineation, changing the word "concurrent" to

---

[1]Kirksey v. State, 122 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

[2]Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

[3]See Strickland, 466 U.S. at 697.

"consecutive." The district court asked Williams' trial counsel whether the change would affect the negotiation. In turn, trial counsel asked Williams, "Is that okay, Lou?" To which Williams responded, "That's fine." As such, Williams' claim that the plea agreement was changed without his knowledge or consent is belied by the record and he was not entitled to relief.[4] Therefore, we affirm the order of the district court denying this claim.

Second, Williams claimed that trial counsel was ineffective for allowing the plea to be accepted by the court without Williams first admitting to the facts of the crime. We conclude that the district court did not err in denying this claim. The record on appeal reveals that during the plea canvass, Williams admitted that he entered the Showtime Mini-Mart with a firearm, ordered Michael Yazzie into a storage area, and then took money from the cash register. Williams also admitted that he entered a building known as Rider's Chevron with a firearm, ordered Joyce Jagger into a storage area, and then took money, a watch and/or a purse from her. The record on appeal further reveals that Williams made these admissions before the district court determined whether the plea was made freely and voluntarily and whether Williams understood the nature of the offense and the consequences of the plea. As such, Williams' claim that he did not admit to the facts of the crime is belied by the record and he was not entitled to relief.[5] Therefore, we affirm the order of the district court denying this claim.

---

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

[5]Id.

Williams also claimed that the district court erred in failing to award him 730 days credit for time served.[6] This court's preliminary review of the record on appeal revealed that the district court may have erroneously denied Williams' petition without conducting an evidentiary hearing on this claim. Williams was entitled to an evidentiary hearing if he raised claims that, if true, would have entitled him to relief and if his claims were not belied by the record.[7] This court has previously held that a petition for a writ of habeas corpus is the proper remedy to obtain credit against a sentence for pre-sentence confinement.[8] Williams was arrested on August 11, 2000, and he was sentenced on January 9, 2002. Provided he was confined for the entire pre-sentence period, Williams should have received 516 days of credit against his sentence. The record on appeal does not support Williams' claim that he was entitled to 730 days credit for time served. However, the record does not belie Williams' claim that he was entitled to more than 150 days of credit against his sentence.

This court ordered the State to show cause why this appeal should not be remanded to the district court for further proceedings. The State has responded to this court's order and states that it does not oppose the remand of this case to district court to determine the correct number of days to which Williams is entitled. Therefore, we reverse the order of the

---

[6]See NRS 176.055.

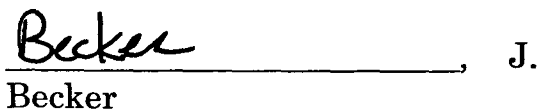
[7]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

[8]See Pangallo v. State, 112 Nev. 1533, 1535, 930 P.2d 100, 102 (1996), limited in part on other grounds by Hart v. State, 116 Nev. 558, 563, 1 P.3d 969, 972 (2000).

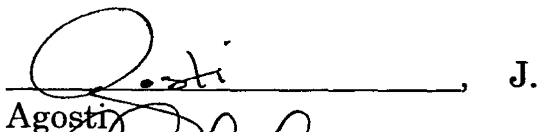
district court in part and remand this matter to the district court to determine the correct number of days.

Accordingly, we

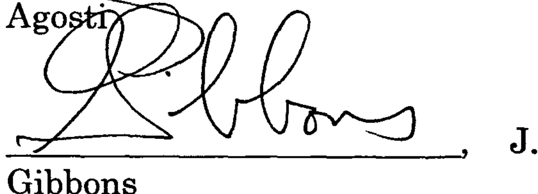
ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[9]



_______________, J.
Becker



_______________, J.
Agosti



_______________, J.
Gibbons

cc: Hon. Nancy M. Saitta, District Judge
Lou Marquette Williams
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

---

[9]This order constitutes our final disposition of this appeal. Any subsequent appeal from an order of the district court regarding presentence incarceration credits shall be docketed as a new matter.