

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
VICTOR BEZNOSENKO,
Respondent.

No. 41495

FILED

OCT 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court granting respondent's post-conviction petition for a writ of habeas corpus. Respondent was originally convicted, pursuant to guilty pleas in separate cases, of one count of battery causing substantial bodily harm and one count of possession of a controlled substance. The district court sentenced respondent to a prison term of 24 to 60 months in the battery case, and to a consecutive prison term of 12 to 34 months in the drug case.

Less than a year after his convictions, respondent filed a petition for a writ of habeas corpus, arguing that counsel was ineffective at sentencing. Specifically, respondent argued that counsel failed: (1) to present evidence that the wound inflicted on the victim of the battery was minimal; (2) to arrange for a treatment program for respondent; (3) to present respondent's military record; and (4) to present respondent's medical records showing a significant mental health history.

Following an evidentiary hearing, the district court found that counsel was ineffective. The district judge concluded that, at a minimum, he would have ordered the sentences in the two cases to run concurrently if counsel had presented all the mitigating evidence at sentencing. The

district court therefore granted the petition and entered an amended judgment of conviction in the drug case, ordering that the sentence run concurrently with the sentence in the battery case.

The State contends that the district court erred by finding that counsel was ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law. We therefore conclude that the district court did not err.

The State also contends that the district court erred by entering the amended judgment of conviction without conducting a new sentencing hearing. The State relies on Weaver v. Warden.² Although it is preferable for the district court to conduct a new sentencing hearing when finding ineffective assistance of counsel at sentencing, we conclude that it was not a clear abuse of discretion for the court to determine an appropriate sentence at the conclusion of the evidentiary hearing. The State never requested a formal sentencing hearing, even after the district court stated that counsel had been ineffective at sentencing. Moreover, the State had ample opportunity at the evidentiary hearing to address the issue of an appropriate sentence for respondent. We therefore conclude


¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


²107 Nev. 856, 822 P.2d 112 (1991).

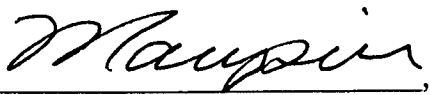
that the district court did not err by failing to conduct a separate sentencing hearing.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Jerome Polaha, District Judge
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Mary Lou Wilson
Washoe District Court Clerk