

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY LOUIS WEBB,  
Appellant/Cross-Respondent,  
vs.  
THE STATE OF NEVADA,  
Respondent/Cross-Appellant.

No. 41496 **FILED**

JAN 30 2004

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from an order of the district court denying, in part, appellant's post-conviction petition for a writ of habeas corpus. The State cross-appeals from the portion of the district court's order granting the petition in part and ordering a new sentencing hearing.

Appellant was originally convicted, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to three consecutive terms of 40 to 120 months. Appellant filed a timely notice of appeal, but voluntarily withdrew the appeal.<sup>1</sup> Appellant timely filed a post-conviction petition for a writ of habeas corpus. The district court denied a number of appellant's claims without an evidentiary hearing. After conducting an evidentiary hearing on the remaining claims, the district court denied all claims but one. Specifically, the district court concluded that counsel was ineffective at sentencing.

Appellant contends that the district court erred by denying all

---

<sup>1</sup>Webb v. State, Docket No. 37825 (Order Dismissing Appeal, June 18, 2001).

but one of his claims. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.<sup>2</sup> The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>3</sup> As to the claims that were dismissed, 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's denial of the claims was error as a matter of law. Accordingly, the portion of the district court's order denying appellant's claims is affirmed.

However, this court concludes that the district court's finding that appellant's trial counsel was ineffective at sentencing is not supported by the record. The district court found that trial counsel failed to "present any argument or facts for the Court to consider running any of the sentences concurrently." This court's review of the sentencing transcript reveals that trial counsel did argue the facts of the crime and requested concurrent sentences. Specifically, when commenting on the presentence investigation report, counsel argued:

---

<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>3</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

On page nine I would certainly hope that you do not follow the consecutive aspect of this. And so often in these cases it's really important for the court to be aware it's only one transaction that occurred over a nighttime in a motel. . . . So please consider that aspect of it being one offense, one transaction.

Immediately before the district court pronounced sentence, appellant's counsel again asked that the sentences be run concurrently. Moreover, the district judge commented on the fact that the three offenses were closely related in time and space.


I was wondering why there is three charges. But then when I heard [the State's] explanation, there were – three individual decisions to go back and get more. And each time the situation of increasing the likelihood that somebody would get hurt increased because, had he woken up, we don't know what would happen. I am not here to judge on what would have happened. But I am here to judge on what did happen. And based on your past conduct, I am going to go ahead. I don't know why the habitual criminal was not pursued. It appears that you certainly qualify for that. But I do think that a term of imprisonment higher than what's recommended is appropriate in this case.

The district court's factual finding that counsel did not argue for concurrent sentences based on the fact that the three offenses were very closely related is not supported by substantial evidence. We therefore conclude that the portion of the order granting appellant's petition and


ordering a new sentencing hearing must be reversed.<sup>4</sup>

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jerome Polaha, District Judge  
Karla K. Butko  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe County Clerk

---

<sup>4</sup>See Strickland, 466 U.S. at 698.