

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY JAMES NGAUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41811

FILED

MAR 23 2004

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 denying appellant's motion to withdraw a guilty plea.

On May 30, 2001, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon (Counts I and II) in district court case number CR01-0440B. The district court sentenced appellant to serve two consecutive terms of 24 to 96 months for Count I and two consecutive terms of 24 to 96 months for Count II. The district court ordered that Counts I and II be served concurrently. The district court further ordered that these terms run consecutively to the terms imposed in district court case number CR01-0519B. Appellant voluntarily dismissed his direct appeal.¹

On May 9, 2003, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On July 1, 2003, the district court denied appellant's motion. This appeal followed.

¹Ngaue v. State, Docket No. 38058 (Order Dismissing Appeal, August 10, 2001).

In his motion, appellant contended that the State breached the plea agreement when the State argued for consecutive sentences. Appellant claimed that the written plea agreement did not permit the State to argue for consecutive sentences. Appellant further claimed that his trial counsel misinformed the district court of the plea negotiations during the plea canvass.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion. Appellant waived his claim that the State breached the plea agreement as a consequence of voluntarily dismissing his direct appeal.²

Moreover, as a separate and independent ground to deny relief, appellant's claim that the State breached the plea agreement is not supported by the record. The record does not support appellant's contention about the terms of the plea negotiations. The written plea agreement in district court case number CR01-0440B did not contain any express language preventing the State from arguing for consecutive sentences.³ In fact, the State expressly reserved "the right to present arguments, facts, and/or witnesses at sentencing in support of the plea

²This court's order dismissing appellant's appeal states that appellant was advised that one consequence of the voluntary dismissal of his appeal was that "any issues that were or could have been brought in this appeal are forever waived." A claim that the State breached the plea agreement is one such issue. See, e.g., Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

³In exchange for appellant's guilty plea, the State agreed that it would "recommend no more than 24 to 60 months plus 24 to 60 months on each count in the Nevada State Prison."

agreement."⁴ The written plea agreement further stated that the sentences for each count may be imposed concurrently or consecutively. The waiver of preliminary examination stated, "[Defendant] to plead 2 cts, the State to stipulate to 24 to 60 on both counts. The State will be free to argue for CS or CC time." Thus, during the plea canvass, appellant's trial counsel correctly set forth the terms for plea negotiations in both district court cases as:

The State will recommend no more than 24 to 60 months in the Nevada State Prison. The State will be free to argue regarding consecutive counts in I and II in each case, and the State will also be free to seek consecutive or concurrent counts as to CR01-0440 and CR01-0519 as they relate to each other.

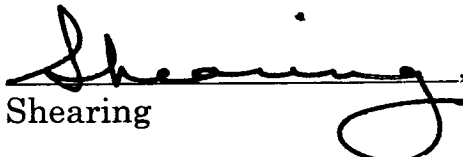
When asked if he had any questions about the negotiations, appellant answered, "Sir, no, sir." Further, appellant acknowledged in his motion that the written plea agreement in district court case number CR01-0519 contained an express provision permitting the State to argue for consecutive sentences.⁵ Thus, we affirm the order of the district court denying appellant's motion.

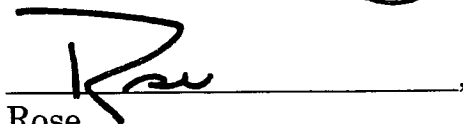
⁴Thus, appellant's reliance upon the holding in Stubbs v. State, 114 Nev. 1412, 972 P.2d 843 (1998), is misplaced.


⁵Appellant entered guilty pleas in both cases during one plea canvass and was sentenced for both cases during one sentencing hearing. Thus, appellant's contention that language contained in the written guilty plea agreement in district court case number CR01-0519 had no bearing on the issue presented in this case is without merit.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Steven R. Kosach, District Judge
Ricky James Ngaue
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).