

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN X. HIGH,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 42411

JUAN X. HIGH,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 42412

JUAN X. HIGH,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 42413

FILED

JAN 13 2005

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

ORDER OF AFFIRMANCE

These are consolidated proper person appeals from orders of the district court denying appellant Juan High's post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Docket No. 42411

On December 30, 1983, the district court convicted High, pursuant to a jury verdict, of three counts of burglary and three counts of robbery with the use of a deadly weapon in district court case no. C62503. The district court sentenced High to serve three terms of five years in the Nevada State Prison for the burglary convictions; three terms of eight years for the robbery convictions; and three terms of eight years for the deadly weapon enhancements. All sentences were imposed to run consecutively.

Docket No. 42412

On December 30, 1983, the district court convicted High, pursuant to a jury verdict, of one count each of conspiracy and burglary, and two counts of robbery with the use of a deadly weapon in district court case no. C62509. The district court sentenced High to serve a term of two years in the Nevada State Prison for the conspiracy conviction; a term of five years for the burglary conviction; two terms of eight years for the robbery convictions; and two terms of eight years for the deadly weapon enhancements. All sentences were imposed to run consecutively to each other and to High's sentence in district court case no. C62503.

Docket No. 42413

On December 30, 1983, the district court convicted High, pursuant to a jury verdict, of one count each of burglary, robbery with the use of a deadly weapon, and sexual assault with the use of a deadly weapon in district court case no. C62508. The district court sentenced High to serve a term of five years in the Nevada State Prison for the burglary conviction; a term of eight years for the robbery conviction; a term of eight years for the deadly weapon enhancement; a term of life for the sexual assault conviction; and an additional term of life for the deadly weapon enhancement. All sentences were imposed to run consecutively to each other and to High's sentences in district court case nos. C62503 and C62509. This court dismissed High's consolidated appeal from his judgments of conviction.¹ The remittitur issued on September 4, 1985.

¹High v. State, Docket No. 15612 (Order Dismissing Appeal, August 20, 1985).

Discussion

On August 7, 2003, High filed identical post-conviction petitions for writs of habeas corpus in each of the district court cases. The State opposed the petitions. High filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent High or to conduct an evidentiary hearing. On December 12, 2003, the district court denied High's petitions. These appeals followed.

In his petitions, High asserted that the Department of Corrections is improperly treating his deadly weapon enhancement sentences as separate and distinct from the primary offense. High contended that prison officials should consider his sentence for the primary offense and his sentence for the deadly weapon enhancement as a single sentence for the purpose of computing good time credits.

In Biffath v. Warden² and Director, Prisons v. Biffath,³ this court held that a sentence for a primary offense and an enhancement sentence must be treated as one continuous sentence for the purposes of computing good time credits and parole eligibility. In 1987, those decisions were overruled in Nevada Dep't Prisons v. Bowen.⁴ In Bowen, we concluded that the primary and enhancement sentences must be treated as separate sentences for all purposes.⁵ Because our decision in Bowen was not foreseeable, we directed that the opinion "be applied retroactively to the extent possible, but in no case shall this opinion be

²95 Nev. 260, 593 P.2d 51 (1979).

³97 Nev. 18, 621 P.2d 1113 (1981).

⁴103 Nev. 477, 745 P.2d 697 (1987).

⁵Id. at 481, 745 P.2d at 699-700.

applied to the detriment of any prisoner sentenced before the date hereof."⁶

High was convicted in 1983; at that time, pursuant to Biffath, the deadly weapon enhancement sentence was not considered separate from the sentence for the primary offense. In 1988, however, prison officials notified High that his sentences that included a deadly weapon enhancement would be divided and treated as two separate and distinct sentences, pursuant to Bowen. High claimed in the instant petitions that he was unfairly prejudiced by the retroactive application of Bowen to his sentences because he will accrue fewer statutory good time credits.

NRS 209.443 provides that a prisoner sentenced after June 30, 1969 for a crime committed before July 1, 1985 should receive two months of good time credit each year for the first two years of a sentence; four months of good time credit each year for the next two years of a sentence; and five months of good time credit each year for the remainder of the sentence. After a preliminary review of this appeal, we concluded that the district court may have erroneously denied High's petitions. Therefore, on July 13, 2004, and again on October 27, 2004, we ordered the State to show cause why these appeals should not be remanded to the district court.

The State responded to our orders on December 1, 2004. The State argues that, although High has appeared before the parole board multiple times since he was notified by prison officials in 1988 that his deadly weapon enhancement sentences would be divided from the underlying offense, he never objected to having his sentences split until he filed the instant petitions. The State further contends that High failed to

⁶Id. at 481 n.4, 745 P.2d at 700 n.4.

demonstrate that he has been, or will be, prejudiced by the new sentence structure. We are persuaded by the State's arguments.

Preliminarily, we note that High failed to provide an adequate explanation for his more than fifteen-year delay in objecting to the application of Bowen to his sentences. More importantly, High did not establish that he was prejudiced by the new sentencing structure. As this court noted in Bowen:

The result of treating two consecutive sentences as one continuous sentence benefits a minority of prisoners who have no prospect of being paroled. This is because more good-time credits may be earned in the fifth and subsequent years of a sentence than in the first four years. . . . For the vast majority of prisoners, however, the result is significantly longer time behind bars, because prisoners serving multiple consecutive sentences may be paroled from a prior sentence to a subsequent sentence, thus satisfying both sentences concurrently.⁷

The documents before this court reveal that, contrary to his assertion, High received a substantial benefit in having his sentences restructured pursuant to Bowen. Although he accrued fewer statutory good-time credits as a result of the divided sentences, this was outweighed by his ability to serve the enhancement sentence while on institutional parole from the primary offense, thereby satisfying both sentences at the same time.⁸ We therefore conclude that the district court did not err in denying High relief.


⁷Id. at 480 n.2, 745 P.2d at 699 n.2.


⁸For example, in case no. C62503, High began serving an eight-year sentence for the primary offense of robbery on December 2, 1994. On January 7, 1997, he was granted an institutional parole and began serving his eight-year sentence for the deadly weapon enhancement. High

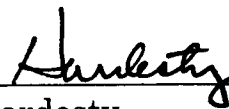
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Having reviewed the records on appeal, and for the reasons set forth above, we conclude that High is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁰


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Juan X. High
Attorney General Brian Sandoval/Las Vegas
Clark County District Attorney David J. Roger
Clark County Clerk

... *continued*

discharged his sentence for the primary offense while he was serving the enhancement and subsequently discharged his sentence for the enhancement on January 17, 2003. High therefore served a combined total of eight years, one month, and fifteen days for this count of robbery with the use of a deadly weapon. If the sentence had instead been treated as one sixteen-year sentence pursuant to Biffath, High would have been required to serve nine years and seven months before the sentence was discharged, assuming he earned the optimum number of statutory and work credits.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have reviewed all documents that High has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.