

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RAY MILLER,

No. 36138

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 12 2001

JANEYTE M. BLOOM
CLERK OF SUPREME COURT
BY: *Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On June 16, 1998, appellant was convicted, pursuant to a guilty plea, of ten counts of burglary. The district court sentenced appellant to serve a prison term of 38 to 96 months for each count and ordered three of the counts to run consecutively, with the remaining counts to run concurrently. Appellant did not file a direct appeal.

Appellant's sole contention is that the district court erred in denying his petition because his guilty pleas were constitutionally infirm.¹ Specifically, appellant contends that his guilty pleas were not knowing and voluntary because he pleaded guilty in reliance on both the State's and

¹We note that appellant also raised several instances of ineffective assistance of counsel in his petition, which the district court rejected. However, because appellant does not address these issues on appeal, we need not consider them.

his counsel's misrepresentations that he was eligible for probation. We conclude that the district court did not err in denying the petition because appellant was correctly informed that he was eligible for probation. Appellant was eligible for probation despite his prior conviction for burglary because the State did not meet its burden to proffer evidence of this conviction.²

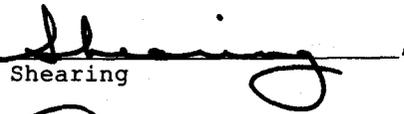
Although appellant notes that the State argued for a prison term of 10 to 15 years based, in part, on his former convictions set forth in his presentence investigation report, the State never affirmatively represented to the district court that appellant was ineligible for probation. To the contrary, at appellant's arraignment, the State informed appellant that he was eligible for probation. Likewise, appellant's plea agreements stated that he was eligible for probation. Finally, appellant's presentence investigation report recognized that probation was a sentencing option, informing the court of appellant's intention to complete a Salvation Army drug treatment program if probation was granted. In sum, the record reveals that the State,

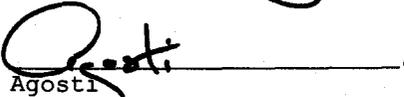
²See Hudson v. Warden, 117 Nev. ___, ___ P.3d ___ (Adv. Op. No. 35, May 17, 2001) (holding that State has the burden to proffer evidence of a prior conviction when the State seeks to use the prior conviction to enhance a sentence); Lewis v. State, 109 Nev. 1013, 862 P.2d 1194 (1993); see also NRS 205.060(2) (provides for enhancement of sentence for a burglary offense, namely, ineligibility for probation, if a defendant "has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling").

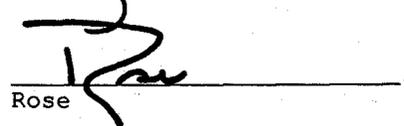
appellant's counsel, and the district court properly proceeded under the assumption that appellant was eligible for probation. Therefore, appellant's plea was knowing and voluntary because, among other things, appellant was properly informed of the possible sentences for the charged offenses, including that he was eligible for probation, prior to entry of his guilty plea.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Agosti, J.


Rose, J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk