IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD WILLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40531

FILED

MAR 13 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted sexual assault of a child under 16 years of age. The district court sentenced appellant Edward Willis to serve a prison term of 84-210 months, and gave him credit for 708 days time served.

First, Willis contends that his right to a speedy preliminary hearing and arraignment was violated. Citing to Barker v. Wingo for support,[1] Willis argues that he was prejudiced by the gap in time from his arrest to the arraignment and entry of the guilty plea, and he compares his predicament to a violation of the constitutional right to a speedy trial. We conclude that Willis is not entitled to relief on this issue.[2]

This court has stated that the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea.[3]

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[1]407 U.S. 514 (1972).

[2]We also note that Willis fails to articulate what relief he is seeking with this assignment of error.

[3]See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975); see also Tollett v. Henderson, 411 U.S. 258, 267 (1973).

Further, the right to a speedy trial is not jurisdictional and may be waived by the conduct of the defendant.[4] Therefore, we conclude that Willis has waived his right to challenge the alleged denial of his right to a speedy preliminary hearing and arraignment.

Second, Willis contends that he would have requested a third replacement counsel had the district court not "chided" him, and as a result, his Sixth Amendment right to counsel was violated.[5] Citing to Junior v. State for support, Willis argues that with a showing of adequate cause, he was entitled to the appointment of new counsel as often as necessary.[6] We conclude that Willis' reliance on Junior is misplaced, and that his argument misrepresents what actually occurred below.

At a hearing on defense counsels' motion to withdraw, counsel informed the district court that Willis made it clear that he did not want the public defender's office representing him, and the discussion focused on Willis' short-lived desire to represent himself and the possible appointment of conflict counsel. At one point, the district court stated to counsel, "Well, in all due respect, I am not going to keep picking counsel until he [Willis] gets one that he likes." Eventually, Willis stated that he wished to have counsel, and the district court granted counsels' motion to

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[4]See Bates v. State, 84 Nev. 43, 46, 436 P.2d 27, 29 (1968). In Bates, this court held that "when the appellant entered his plea of guilty . . . he waived whatever right he had to a speedy trial." Id. at 47, 436 P.2d at 29.

[5]U.S. Const. amend. VI.

[6]91 Nev. 439, 537 P.2d 1204 (1975).

withdraw and appointed conflict counsel. Several months later, Willis pleaded guilty.[7]

As stated above, the entry of a guilty plea waives any right to appeal regarding events occurring prior to the entry of the plea.[8] Therefore, we conclude that Willis has waived his right to challenge the alleged district court error. To the extent that Willis is claiming that the district court's statement resulted in either (1) his guilty plea not being entered knowingly or intelligently, or (2) the ineffective assistance of counsel, those issues are more appropriately raised in a post-conviction petition in the district court in the first place and are not appropriate for review on direct appeal.[9]

Third, Willis contends the State breached the negotiated plea agreement at sentencing. Willis argues that an earlier and more lenient plea offer by the State should be specifically performed because a letter from his counsel informing him about the offer never reached him. Willis

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[7]Willis also argues in this direct appeal that he was not competent to enter a knowing and intelligent guilty plea. We will not address this issue. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (holding that challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34).

[8]See Webb, 91 Nev. 469, 538 P.2d 164; see also Tollett, 411 U.S. at 267.

[9]See Bryant, 102 Nev. at 272, 721 P.2d at 368; Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013-14 (2001) (reiterating this court's general policy that claims of ineffective assistance of counsel should be presented to the district court in the first instance in post-conviction proceedings where factual uncertainties can be resolved in an evidentiary hearing).

claims "the jail staff failed to give him the mail." We conclude that the State did not breach the plea agreement.

When the State enters into a plea agreement, it is held to "'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and spirit of the plea bargain.[10] Due process requires that the bargain be kept when the guilty plea is entered.[11] "[A] defendant may not enter a plea of guilty . . . unless the plea bargain is set forth in writing and signed by the defendant, the defendant's attorney, if he is represented by counsel, and the prosecuting attorney."[12]

In this case, our review of the transcripts of Willis' guilty plea canvass and sentencing hearing, and the written guilty plea agreement, reveals that Willis' argument is belied by the record.[13] Only one written plea agreement was validly executed, and Willis does not argue that the State failed to specifically perform that agreement. Willis' argument is based on his unhappiness with counsels' negligence in failing to ensure that he was informed about the earlier offer, and not that a formal agreement had ever been reached with the State regarding that offer.

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[10]Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

[11]Id. (citing Santobello v. New York, 404 U.S. 257 (1971); Gamble v. State, 95 Nev. 904, 604 P.2d 335 (1979)).

[12]NRS 174.035(6)(b); see also NRS 174.063 (mandating the form of a written plea agreement for a guilty plea).

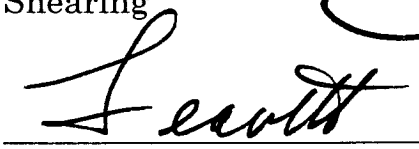
[13]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Once again, to the extent that Willis claims that his counsel were ineffective, we will not address it.[14]

Having considered Willis' contentions and concluded that they are without merit or not cognizable on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing



_____, J.
Leavitt

_____, J.
Becker

cc: Hon. John M. Iroz, District Judge
Mary Lou Wilson
Attorney General Brian Sandoval/Carson City
Humboldt County District Attorney
Humboldt County Clerk

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[14]See Bryant, 102 Nev. at 272, 721 P.2d at 368.