

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74050

FILED

SEP 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jack Leal appeals from a judgment of conviction, entered pursuant to a guilty plea, of multiple transactions involving fraud or deceit in the course of an enterprise or occupation. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, Leal argues the district court erred by failing to hold an evidentiary hearing or failing to inquire into the nature or materiality of his breach of the plea agreement. We disagree.


The parties agreed in the guilty plea agreement that if Leal paid full restitution to the victims in this case by the sentencing date, the State would not oppose probation. If Leal failed to pay the full restitution amount by the sentencing date, the State could argue for imprisonment. Leal failed to pay the full restitution amount by the sentencing date. Here it was apparent the defendant was to blame for the breach of the plea agreement; therefore, no evidentiary hearing was necessary to determine who was to blame. *Villalpando v. State*, 107 Nev. 465, 467-68, 814 P.2d 78, 80 (1991). Accordingly, the district court did not err by failing to hold an evidentiary hearing or otherwise inquire into the nature or materiality of the breach of the plea agreement.

Second, Leal argues the district court abused its discretion by denying his motion to withdraw counsel due to a conflict of interest. Leal claims it was a conflict of interest for his counsel to represent both him and his codefendant in this case. Specifically, he claims his counsel should have been able to withdraw at sentencing, after making an oral motion, because he and his codefendant had conflicting defenses as to why they did not pay the restitution in full.

Leal failed to demonstrate the district court abused its discretion by denying his motion to withdraw counsel. First, it does not appear Leal made an appropriate motion to withdraw based on the local rules. *See* EDCR 7.40(b). Second, Leal waived any current or potential conflicts of interest by signing two different waivers regarding actual and potential conflicts of interest. *See* RPC 1.7(b); *see also* *Ryan v. Eighth Judicial Dist. Court*, 123 Nev. 419, 430, 168 P.3d 703, 710 (2007). Finally, Leal failed to demonstrate there was a conflict of interest because the fact his codefendant did not also pay the restitution was not a defense to his breach of the guilty plea agreement. *See* RPC 1.7(b)(3). Leal and his codefendant were jointly and severally liable for the restitution and the restitution was required to be paid in full by the sentencing hearing.

Having reviewed the claims raised on appeal, we
ORDER the judgment of conviction AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹In light of this order, we deny Leal's motion for bail pending appeal.

cc: Hon. Michael Villani, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk