

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID COIL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 74949

ADDENDUM TO RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgement of Conviction
Eighth Judicial District Court, Clark County**

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STATEMENT OF THE CASE

On February 5, 2019, Appellant filed an Addendum to his Opening Brief. The State responds herein.

ARGUMENT

I. THE VALIDITY OF APPELLANT'S GUILTY PLEA IS INAPPROPRIATE FOR DIRECT APPEAL.

Appellant relies on Bryant v. State, 102 Nev. 268, 272. 721 P.2d 364 (1986), to support his claim that the court can review the validity of his guilty plea because his challenge rests on purely legal and not factual allegations. Appellant's Addendum ("Add.") at 13. This is an incorrect reading of the case.

Bryant stands for the proposition that challenges to the knowing and voluntary nature of a guilty plea are factual in nature, not purely legal, and will no longer be permitted on direct appeal. Indeed, in Bryant the court found:

Application of this type of test [totality of the circumstances] is essentially factual in nature, and thus best suited to trial court review in the first instance. Accordingly, in the future we will no longer permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgement of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding under NRS 34.360 or NRS 177.315.

Id., 721 P.2d at 364.

Here, Appellant specifically states that he is challenging the validity of his guilty plea because, “he was deprived the right of self-representation and the district court failed to ensure that Coil understood the elements of the charges to which he pleaded guilty and advised him of the bulk of the rights he was giving up only after accepting his plea, rendering his guilty plea unknowing.” Add. at 13-14. Accordingly, this claim is not appropriate on direct appeal and should have been brought in a motion to withdraw plea or post-conviction proceeding.

Therefore, this Court should not address Appellant’s claim.

II. APPELLANT FORFEITED HIS RIGHT TO ASSERT A CLAIM REGARDING SELF-REPRESENTATION

It is well settled law that when a defendant pleads guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself, or

that the plea was entered without effective assistance of counsel. NRS 34.810(1); Kirsey v. State, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996), citing Warden. Nevada State Prison v. State, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984).

A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005)(quoting Tollet v. Henderson, 411 U.S. 258, 267 (1973)).

Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollet v. Henderson, 411 U.S. 258, 267 (1973)).

Here, Appellant claims that the district court violated his right to self-representation by coercing him to withdraw both of his requests to proceed pro se. Add. at 15. This claim is independent of whether Appellant voluntarily entered his plea or received effective assistance of counsel. Thus, Appellant forfeited his right to raise this claim by virtue of entering his guilty plea agreement, and this Court should affirm the Judgement of Conviction.

Furthermore, even if Appellant's claim was not forfeited, Appellant cannot show prejudice because there was no trial. In People v. Carl, 58 A.D.2d 948,949, 397 N.Y.S.2d 193, 193 (N.Y. App. Div. 1977), Reversed on other grounds by People v. Carl, 46 N.Y.2d 806, 413 N.Y.S.2d 916, 386 N.E.2d 828 (N.Y. 1978), the trial court denied a defendant's request to proceed pro se at a pretrial proceeding. The Defendant subsequently entered a guilty plea in accordance with plea bargaining that had taken place. Id. Upon review, the court held that since the Defendant did not go to trial, no actual defense was presented, and thus the trial court did not deny the Defendant the constitutional right to represent himself. Id. Like Carl, Appellant chose to enter into a guilty plea agreement instead of going to trial. Therefore, Appellant cannot show that he was deprived of the constitutional right to represent himself.

Moreover, Appellant cannot show error because his request was equivocal. Appellant withdrew both of his requests for self-representation, and he was unprepared for trial when he made these requests. Thus, Appellant's Faretta canvass was conditioned on the court issuing a continuance in order for Appellant to prepare. Whether the court erred in denying Appellant's request for a continuance is waived by virtue of the guilty plea and not reviewable on direct appeal.

Therefore, this Court should find that Appellant was not deprived of his right of self-representation and affirm the Judgement of Conviction.

III. APPELLANT KNOWINGLY AND VOLUNTARILY ENTERED HIS PLEA

As a matter of due process, a defendant must enter a guilty plea with “real notice of the true nature of the charge against him. “See Smith v. O’Grady, 312 U.S. 329, 334, 61 S. Ct. 572, 574, 85 L.Ed. 859 (1941). Both our legislature and this court have adopted this constitutional rule by requiring a trial court to address a defendant personally at the time he enters his plea to determine whether he understands the nature of the charge to which he is pleading guilty. See NRS 174.035 (1); see also Hanley v. State, 97 Nev. 130, 624 P.2d 1387 (1981). As held in Hanley, two methods exist whereby a district judge may affirmatively elicit such an understanding from a defendant at the time the judge accepts a plea of guilty. 97 Nev. at 134, 624 P.2d at 1390. The judge may elicit either a statement from the defendant indicating that he understands the elements of the offense, or an admission from the defendant indicating that he committed the crime charged. Id.

This Court is concerned with determining whether a defendant understood the true nature of the charges against him. Bryant, 102 Nev. at 273, 721 P.2d at 368. Such an understanding does not always require that a defendant express an understanding of, or admit to, every specific element of the crime charge. Id. Such a requirement is not necessarily in all cases to a basic and true understanding of the nature of the crime. Id.

Here, Appellant complains that he did not knowingly and voluntarily enter his guilty plea because he was unaware of the elements of the crimes for which he was charged. Add. at 22-23. This claim is belied by the record. Appellant disregards the fact that a defendant can show understanding by indicating that he committed the crimes charged, which is exactly what Appellant did when entering his plea:

THE COURT: Sir, do you understand the proceedings that are happening here today?

DEFENDANT: Yes.

THE COURT: Sir, have you received a copy of the Amended Information in your case?

DEFENDANT: Is that what it was?

MR. MATSUDA: Yeah.

DEFENDANT: Yes. Yes, I did.

THE COURT: *So do you know the charges that you're facing in this case?*

DEFENDANT: *Yes, ma'am.*

THE COURT: *And as to all of those charges, how do you plead?*

DEFENDANT: *Guilty.*

THE COURT: And sir, are you making this plea freely and voluntarily?

DEFENDANT: Yes.

AA 163 (emphasis added).

By admitting that he committed the crimes charged, Appellant indicated that he understood the nature of the charges against him. Therefore, whether Appellant was informed of the elements of these crimes is immaterial as to whether he knowingly and voluntarily entered his plea.

Furthermore, Appellant's claim that he was not advised of his rights until after accepting his guilty plea is incorrect. Before entering his guilty plea, the court

advised Appellant of his many constitutional rights. AA 169-70. Then, after accepting his plea, the court advised Appellant of several additional rights before finding that his plea was freely and voluntarily made. AA 175. Appellant cites to no authority or case law that says this method of canvassing is incorrect.

Accordingly, this Court should find that Appellant knowingly and voluntarily entered his plea and affirm the Judgement of Conviction.

CONCLUSION

WHEREFORE, the State respectfully requests that Appellant's Judgement of Conviction be AFFIRMED.

Dated this 25th day of February, 2019.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 1,391 words and 7 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of February, 2019.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 25th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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