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IN THE SUPREME COURT
OF THE STATE OF NEVADA

DAINE CRAWLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

} Docket No. 81011
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APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby certifies that he is not employed by a parent corporation and no such corporation exists that owns 10% or more of the party's stock.



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STATEMENT OF JURISDICTION

The Nevada Supreme Court has appellate jurisdiction over this matter pursuant to NRS 177.015 (3) which states, “the defendant only may appeal from a final judgment or verdict in a criminal case.”

The Judgment of Conviction was filed on April 7, 2020, and the Notice of Appeal was filed on April 6, 2020.

ROUTING STATEMENT

The Court of Appeals shall hear and decide only those matters assigned to it by the Supreme Court. The following case categories are presumptively assigned to the Court of Appeals:

(1) All postconviction appeals except those in death penalty cases and cases that involve a conviction for any offenses that are a category A felony; any direct appeal from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford); direct appeals from a judgment of conviction that challenges only the sentence imposed or the sufficiency of the evidence; and any direct appeal from a judgment of conviction based on a jury verdict that does not involve a conviction for any offenses that are category A or category B felonies;...

The Court of Appeals retains jurisdiction of this appeal because it is a direct appeal from a judgment of conviction based on a plea of guilty.

STATEMENT OF ISSUE

Whether the Defendant should be allowed to withdraw his guilty plea.

STATEMENT OF THE CASE

On April 1, 2020, Mr. Crawley was sentenced as to a maximum of two hundred forty-one (241) months with a minimum of eighty-four (84) months with sixty-seven (67) days credit time served.

STATEMENT OF RELEVANT FACTS

On July 15, 2019, Mr. Crawley pled guilty to one count of Carrying a Concealed Firearm or Deadly Weapon. As part of the guilty plea, Mr. Crawley was to receive an own recognizance release so he could go to the Crossroads Residential Treatment Center for in patient drug treatment on the same day. Mr. Crawley was not released until July 16, 2019 at 8 p.m. and a bed was no longer available for Mr. Crawley. Accordingly, Mr. Crawley did not receive the benefit of the guilty plea agreement that he was most interested in, which was a timely release so he could be accepted to the in-patient treatment program. Unfortunately, Mr. Crawley was placed back into custody after committing a new crime on August 9, 2019.

SUMMARY OF ARGUMENT

Mr. Crawley should be permitted to withdraw his guilty plea because the benefit of the bargain was not received.

ARGUMENT

District courts may grant a motion to withdraw a guilty plea prior to sentencing for any substantial, fair and just reason. Crawford v. State, 30 P.3d 1123, 1125 (Nev. 2001). Accordingly, Nevada trial and appellate courts must apply a more relaxed standard to presentence motions to withdraw guilty pleas than to post-sentencing motions. Molina v. State, 87 P.3d 533, 537 (Nev. 2004), NRS 176.165. To determine whether the defendant advanced a substantial, fair, and just reason to withdraw a plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently. State v. Freese, 116 Nev. 1097 (2000).

In the matter before this Court, Mr. Crawley did not receive the benefit of the bargain by being immediately released on his own recognizance after the entry of his guilty plea. Consequently, he lost his placement at the in-patient treatment program. Mr. Crawley was well aware of his drug problem and aware of his proclivity to not abide by the laws. Accordingly, Mr. Crawley undertook substantial measures that he would go to a safe environment upon his release and combat his addiction. Nevertheless, the State of Nevada failed Mr. Crawley without giving him a timely own recognizance release. Mr. Crawley was returned to the streets and committed a new crime, which precluded him from receiving a possible grant of probation at the time of sentencing. The State was granted

permission to argue for prison time since the terms of the plea agreement had been violated. Mr. Crawley was given a very significant sentence and the system failed Mr. Crawley in his attempt to be a law-abiding citizen.

CONCLUSION

Mr. Crawley ask that the District Court be ordered to permit withdrawal of his guilty plea and that a new trial be set in this matter.

CERTIFICATE OF COMPLIANCE

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). The typeface and the type style that was used is Times New Roman, size 14 point.

I further certify that this brief complies with the page limitations of NRAP § 32(a)(7), because it does not exceed 30 pages; excluding the parts of the brief exempted by NRAP § 32(a)(7)(C).

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 the 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 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 the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this October 10, 2020.



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