

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAINE CRAWLEY,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Nov 12 2020 01:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81011

RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction after a Guilty Plea
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals because it is an appeal from a judgment of conviction based on a plea of guilty. NRAP 17(b)(1).

STATEMENT OF THE ISSUE(S)

1. Whether Appellant is entitled to withdraw his guilty plea.

STATEMENT OF THE CASE

On July 12, 2019, Daine Crawley (hereinafter (“Appellant”)) was charged by way of Information for having committed the crime of Carrying Concealed Firearm or Other Deadly Weapon (Category C Felony- NRS 202.350 (1)(d)(3)- NOC 51459). Appellant’s Appendix (“AA”) at 1.

On July 15, 2019, Appellant entered a plea of guilty to the crime as listed in the Information at Initial Arraignment. Respondent's Appendix ("RA") 000001. The Guilty Plea Agreement ("GPA") was filed the same day in open court. AA 3.

On October 28, 2019, Appellant filed a Motion to Dismiss Counsel and Appoint Alternate Counsel. RA 000002. On November 19, 2019, the State filed its Notice of Intent to Seek Punishment as a Habitual Criminal. RA 000006.

On January 31, 2020, Appellant filed a Motion to Withdraw Plea. RA 000008. The State filed its Opposition on February 14, 2020. RA 000012. On February 19, 2020, the District Court heard oral arguments on the motion. RA 000018. The Court concluded that there was an insufficient basis to withdraw the plea and denied the motion. Id.

On March 4, 2020, Appellant's sentencing hearing took place. At the hearing, the State argued in support of Habitual Treatment since he violated his agreement. Defense counsel provided that there were errors within Crawley's PSI. The Court ordered that the sentencing proceedings be continued to correct the PSI. On April 1, 2020, Appellant was sentenced pursuant to the Small Habitual Criminal Statute. Appellant was sentenced to a minimum of eighty-four (84) months and a maximum of two hundred-forty (240) months in the Nevada Department of Corrections (NDC). Defendant stated he had two hundred sixty-one (261) days credit. The District Court ordered sixty-seven (67) days credit for time served. AA 19.

On April 6, 2020, Appellant filed a Notice of Appeal. AA 16. The Judgment of Conviction (“JOC”) was filed on April 7, 2020. AA 19. Appellant’s Case Appeal Statement was filed on April 13, 2020. RA 19. During this period, Appellant’s appeal was pending under Nevada Supreme Court case number 81011, but no Opening Brief had yet been filed.

On June 4, 2020, Appellant filed a Petition for Writ of Habeas Corpus (Post-Conviction) (First Petition) and on June 12, 2020, Appellant filed another Petition for Writ of Habeas Corpus (Post-Conviction) (Second Petition). RA 000020; 000036. The State responded to both petitions on July 21, 2020. RA 000053. The Court Minutes from August 19, 2020, seem to indicate that the district court granted Appellant’s Petition while this appeal was pending, but as of the date of this Answering Brief no Findings of Fact, Conclusions of Law or Order have been filed disposing of the Petition, nor did the District Court certify its intent to grant the Petition or seek remand. *See Foster v. Dingwall*, 126 Nev. 49, 53, 228 P.3d 453, 455 (2010); RA 000061.

Appellant filed his Opening Brief on October 12, 2020. The State’s response now follows.

STATEMENT OF THE FACTS

The district court relied on the following factual summary in sentencing Appellant:

On June 12, 2019, officers were dispatched to a location between the Excalibur and the Luxor in reference to a person threatening pedestrians with a knife. Upon arrival, contact was made with a witness who stated he was walking with his friend through the hotel parking lot when they were approached by a male, later identified as defendant Daine Anton Crawley, who got in his face and made unintelligible comments while retrieving a knife from his backpack. The witness felt threatened by the defendant who held the knife in his hand with the blade exposed. He stepped away from the defendant who then approached a vehicle with three occupants and attempted to open the door before the car drove away. As the defendant walked to another vehicle and hit the window, the witness notified police and security.

Officers also spoke to witness' friend who relayed the same events as described by the witness. While the defendant was being detained, he stated that he did not have a knife; however, officers located a knife in his pocket.

Based on the above facts, Mr. Crawley was arrested, transported to the Clark County Detention Center, and booked accordingly.

Presentence Investigation Report, August 27, 2019, at 7-8.

SUMMARY OF THE ARGUMENT

Appellant claims that he should be permitted to withdraw his guilty plea because the benefit of the bargain was not received. Appellant's claim is barred as the proper vehicle for requesting the withdrawal of a guilty plea is by Petition for Writ of Habeas Corpus (Post-Conviction). Appellant does not argue that the district court erred in denying his pre-sentence Motion to Withdraw Plea. Instead, Appellant alleges that he did not receive the benefit of the bargain, which was not available as,

not the basis of, the pre-sentence motion. Instead, Appellant appears to request that this Court determine that he may withdraw his plea in the first instance. The claims brought to this Court by Appellant are unsupported and without merit.

ARGUMENT

I. APPELLANT’S CLAIM IS PROCEDURALLY BARRED

Appellant seeks to withdraw his plea in the instant appeal. Appellant’s Opening Brief (“AOB”) at 3. In Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014), the Nevada Supreme Court reversed a district court order that decided a motion to withdraw a plea on the merits. In reversing and remanding, the Supreme Court determined that challenges to the plea are collateral attacks and thus may *only* be made via a post-conviction petition for a writ of habeas corpus. In that vein, the Supreme Court instructed lower courts on what they are required to do when a defendant seeks to withdraw his plea via written motion: “In the case of future filings and for any currently pending post-sentence motion to withdraw a guilty plea, the district court should construe the motion to be a post-conviction petition for a writ of habeas corpus and require the defendant to cure any defects (filings not in compliance with the procedural requirements of NRS Chapter 34) within a reasonable time period selected by the district court.” Id. at 628.

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); Kirksey 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).

In the instant case, Appellant claims he “did not receive the benefit of the bargain” after the entry of his guilty plea. AOB at 3. Specifically, Appellant argues that his Own Recognizance (“OR”) release at the entry of his plea was untimely, therefore, precluding him placement in the in-patient treatment program. Id. Appellant’s claim is improperly raised on appeal before this Court. First, Appellant may *only* move to withdraw his plea via a post-conviction petition for writ of habeas corpus filed in the district court in the first instance. Second, even if this direct appeal were treated as a post-conviction petition for writ of habeas corpus, Appellant’s claims fail. [B]oth the plain language of the statute and the legislative and statutory history of NRS 34.810(1)(a) demonstrate that the scope of claims that may be raised in a postconviction petition challenging a conviction entered as a result of a guilty plea are limited to claims that challenge the validity of the guilty plea. These claims may be raised either directly, i.e., a claim asserting the plea was not voluntarily or knowingly entered, or indirectly, i.e., a claim asserting the plea was entered without the effective assistance of counsel. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev. App. 2020).

Even if this were a Petition, the Court of Appeals clarified the scope of NRS 34.810, and the grounds presented in the instant appeal exceed the scope of that statute. Appellant does not argue that his plea was not knowingly and/or voluntarily entered into, but that Appellant did not receive any benefit by pleading guilty since his OR release was allegedly untimely. As such, this Court should affirm the Judgment of Conviction.

To the extent Appellant argues he received an untimely OR release, such allegation is bare, naked, and meritless. “Bare” and “naked” allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Appellant offers no evidence to support such an unusual claim. Appellant simply provides the blanket statement that Appellant’s OR release was allegedly delayed, impeding his admission into in-patient drug treatment.

There is no support for Appellant’s claim that such delay of his OR release even occurred, nor for the proposition that that the alleged delay somehow violated the terms of his GPA. See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”) State v. Haberstroh, 119 Nev. 173, 187, 69 P.3d 676, 685-86 (2003) (This Court has stated that “[c]ontentions unsupported by specific argument or authority should be

summarily rejected on appeal.”) (internal citations omitted). As such, Appellant’s claim should be denied

CONCLUSION

For the foregoing reasons, this Court should affirm the Judgment of Conviction.

Dated this 12th day of November, 2020.

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 of more, contains 1,556 words and 8 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 12th day of November, 2020.

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 12th day of November, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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