

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAXTON CHEYANNE GARCIA,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 82968

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RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE

This is an appeal of a judgment of conviction following a guilty plea. Braxton Cheyanne Garcia, hereafter “Garcia,” was charged with a single count of Child Abuse With Substantial Bodily Harm. Appellant’s Appendix, hereafter “AA,”¹⁻⁵. Garcia’s counsel stipulated to set a preliminary hearing for April 26, 2018. AA, 16. On April 18, 2018, while still represented by counsel, Garcia filed a fugitive document asserting that his statutory right to a preliminary hearing within 15 days had been violated. The Reno Justice Court rejected the document as fugitive. *Id.*, 9-15. On April 26, 2018, the preliminary hearing was heard as scheduled, and the justice of the peace found probable cause to bind over the case to district court. *Id.*, 119-163. The parties eventually arrived at negotiations. Petitioner agreed

to plead guilty to the sole count of the information, and the parties agreed to a joint sentencing recommendation of 5-12.5 years in prison, with credit for time served in custody. Otherwise, the parties were free to argue for an appropriate sentence. *Id.*, 142, 147. Petitioner was canvassed and pled guilty on January 28, 2021. AA, 119-141. At the March 18, 2021 sentencing hearing, Petitioner expressed his dissatisfaction with counsel and his desire to withdraw the plea. *Id.*, 156-163. The district court scheduled a hearing pursuant to *Young v. State*, 120 Nev. 963, 102 P.3d 572 (2004), and a sentencing hearing, on April 22, 2021. *Id.*, 164-196. At the commencement of the *Young* hearing, Petitioner indicated that he no longer wished to withdraw his plea. *Id.*, 171-172. The sentencing hearing then proceeded, and Petitioner was sentenced to 60 to 144 months. *Id.*, 194-195. This appeal followed.

II. ROUTING STATEMENT

Because this case pertains to a category B felony, it is not presumptively assigned to the Court of Appeals. NRAP 17(b)(2)(A). The State has no preference as to which court reviews this appeal.

III. STATEMENT OF FACTS

At the preliminary hearing, the justice of the peace addressed the fugitive document filed by Garcia. AA, 40-42. The judge correctly

informed Garcia that the right to a preliminary hearing was a statutory right that his counsel could waive. *Id.* At the preliminary hearing, it was established that Garcia claimed the ten-month-old child, Logan, fell from his arms, striking his head on the dresser. *Id.*, 60-61. Dr. Kristen MacLeod testified on behalf of the State. She explained that Logan exhibited concerning neurological signs following the incident. *Id.*, 79-97. Logan also had small bruises on the inside of his right knee. The CT scan revealed a large occipital fracture, with matter bulging through pieces of his skull. *Id.* He also had a subdural hematoma. *Id.* Dr. MacLeod explained that this type of head injury is more commonly associated with inflicted head trauma than accidental trauma. *Id.* The injury was very inconsistent with what Garcia told the police. *Id.* Logan had to eventually have a shunt placed in his brain to relieve pressure from fluid. *Id.* Dr. MacLeod testified that the nature of the head injury meant that Logan, “will never have the same potential that he had before.” *Id.* His brain would never regenerate in the injured area, but Logan’s brain might develop neurologic connections in other areas of the brain to compensate. *Id.*

IV. SUMMARY OF ARGUMENT

Garcia argues that he is entitled to relief based on the violation of his statutory right to preliminary hearing within 15 days. However, this right

was validly waived by his counsel. Additionally, despite the purported violation of his statutory right, Garcia also pled guilty. Thus, he cannot properly complain of alleged procedural irregularities leading up to his entry of plea. The conviction should be affirmed.

V. STATEMENT OF ISSUES

- A. Garcia's prior counsel waived his statutory right to a preliminary hearing within 15 days of arrest. Garcia disagreed with his counsel's decision. Where he pled guilty, is Garcia entitled to a remand of his case, and a new preliminary hearing?

VI. ARGUMENT

A. The Judgment of Conviction Should Be Affirmed.

1. *Standard of Review*

In general, this Court reviews questions of law and statutory interpretation *de novo*. *Sheriff, Clark County v. Burcham*, 124 Nev. 1247, 198 P.3d 326 (2008).

2. *Discussion*

Here, Garcia argues that he is entitled to relief because his attorney set his preliminary hearing date for longer than 15 days past the date of his arrest. He is wrong, because the decision to waive the 15-day statutory requirement is a strategic decision that fell within the discretion of counsel. "For certain fundamental rights, the defendant must personally make an informed waiver. For other rights, however, waiver may be effected by

action of counsel.” *New York v. Hill*, 528 U.S. 110, 114 (2000). “The holding of a preliminary hearing is a statutory proceeding, and it is a rule well recognized by the courts of the land that one charged with a crime may waive a statutory requirement.” *State v. Holt*, 47 Nev. 233, 219 P.446 (1923). A waiver of a defendant’s statutory rights may be made by counsel. *Furbay v. State*, 116 Nev. 481, 484, 998 P.2d 553, 555 (2000).

Additionally, despite his dissatisfaction with the preliminary hearing date, Garcia chose to plead guilty, and to accept the terms of the negotiations. “A guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” *See Webb v. State*, 91 Nev. 469, 538 P.2d 164 (1975) (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)).

Because the right to a preliminary hearing within 15 days is a statutory right, and not a constitutional right, counsel’s waiver of the time period was valid. Additionally, Garcia pleaded guilty, waiving his right to complain of constitutional deprivations in the events leading up to the plea.

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VII. CONCLUSION

Based on the foregoing, the State respectfully asserts that the judgment of conviction should be affirmed.

DATED: December 13, 2021.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE
Chief Appellate Deputy

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 2013 in Georgia 14.

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

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

DATED: December 13, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on December 13, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

David K. Neidert, Esq.

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