

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD ANDREW SURGEON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43089

**FILED**

SEP 29 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of five counts of theft.<sup>1</sup> Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Todd Andrew Surgeon to serve five prison terms of 40 to 120 months, ordering two of the counts to run consecutively and three of the counts to run concurrently.

Surgeon's sole contention is that the district court erred in denying his motion for substitute counsel and a continuance of the trial. The district court denied Surgeon's motion finding that: (1) his retained counsel was competent and ready for trial; (2) Surgeon had five prior attorneys and his request for a new attorney was merely a "delaying tactic"; and (3) the victims would be irreparably harmed if a continuance was granted. Surgeon contends that the district court erred in denying the motion because his relationship with his retained attorney had

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<sup>1</sup>Surgeon was originally charged with 8 counts of theft for crimes involving 8 different victims.

diminished to the point where Surgeon felt that he could not adequately represent him and, therefore, Surgeon should have been granted a continuance of the trial so that newly retained counsel of his choosing could adequately prepare for trial. We decline to consider this issue.

By pleading nolo contendere, Surgeon waived all errors occurring prior to the entry of his plea, including the purported violation of his Sixth Amendment rights.<sup>2</sup> In fact, the signed plea agreement expressly stated:

I understand that I have the right to appeal from adverse rulings on pretrial motions only if the State and the Court consent to my right to appeal. In the absence of such an agreement, I understand that any substantive or procedural pretrial issue or issues which could have been raised at trial are waived by my plea.


Although Surgeon filed several pretrial motions, there is no indication in the record on appeal that Surgeon expressly preserved the right to appeal the district court's rulings on those motions before entering his nolo contendere plea.<sup>3</sup> We therefore conclude that Surgeon waived his right to challenge the district court's denial of his motion for a continuance and substitution of counsel by entering a nolo contendere plea.

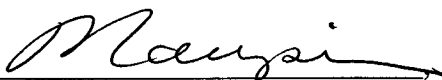
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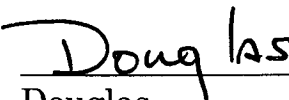
<sup>2</sup>See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

<sup>3</sup>See NRS 174.035(3).

Having considered Surgeon's contention and concluded that it has not been preserved for review on direct appeal, we ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Connie J. Steinheimer, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk