

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43212

FILED

JAN 31 2005

ORDER OF AFFIRMANCE

JANEITE M. GLOOM
CLERK OF SUPREME COURT
BY *J. R. Rude*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of attempted theft. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. The district court sentenced appellant Anthony Allen to serve a prison term of 19 to 48 months.

Allen argues that his nolo contendere plea is invalid because he was not informed of the direct consequences of the plea. Additionally, Allen contends that he entered a plea based on the belief that "he would be achieving the lowest possible sentence under the statute." Finally, Allen argues that he should be allowed to withdraw his plea because the district court treated his offense as a felony¹ and imposed the maximum possible

¹Under the relevant sentencing statutes, the district court had discretion to treat the charged offense as either a gross misdemeanor or a felony. See NRS 205.0835(3); NRS 193.330(1)(a)(4).

sentence, despite the fact that the State agreed to make no recommendation at sentencing. We decline to consider Allen's contentions.

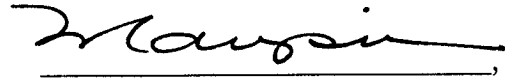
This court has held that, generally, challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.² In this case, there is no allegation, or indication in the record on appeal, that Allen previously raised the issue involving the validity of his nolo contendere plea in the district court. Accordingly, we conclude that Allen must bring his challenge to the validity of the nolo contendere plea in the district court in the first instance.³

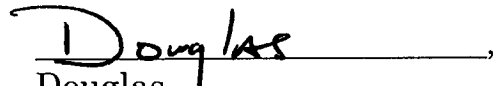
²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002).

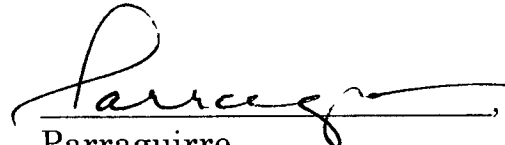
³Allen cites Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999), in support of his argument that this court should consider his challenge to the validity of the plea on direct appeal. That case, however, expressly states that "challenges to the validity of a guilty plea . . . must be first pursued in post-conviction proceedings in the district court." Id. at 751-52, 877 P.2d at 1059.

Having considered Allen's contentions and concluded that they are not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.⁴


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Kathy A. Hardcastle, District Judge
William J. Taylor
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴Because Allen is represented by counsel in this matter, we decline to grant Allen permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Allen unfiled all proper person documents that Allen has submitted to this court in this matter.