

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON LEIGH HUBBARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43821

FILED

JUN 29 2005

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 guilty plea, of one count of attempted sexual assault. First Judicial District Court, Carson City; Michael R. Griffin, Judge. The district court sentenced appellant Brandon Hubbard to a prison term of 96 to 240 months.

Hubbard first claims that the district court lacked jurisdiction to adjudicate his case because the juvenile court's decision to certify him for criminal proceedings as an adult was erroneous and an abuse of discretion. "The order of the juvenile court transferring a child to the adult court is the final order of the juvenile court in the civil proceedings pending before it."¹ It is therefore "properly appealable as a final judgment in a civil matter."² Hubbard was certified by the juvenile court on November 14, 2002. He did not appeal the juvenile court's decision and consequently waived any alleged errors in the juvenile court's certification decision. Moreover, the record does not support Hubbard's claim that the

¹Castillo v. State, 106 Nev. 349, 351, 792 P.2d 1133, 1134 (1990); see also NRAP 3A(b).

²Id.

juvenile court acted erroneously or abused its discretion in certifying Hubbard. Accordingly, we conclude that the district court acted within its jurisdiction.

Next, Hubbard claims that his plea is invalid because he was not advised of the elements of the crime. Specifically, he contends that the correct criminal information was not on file when his plea was entered and that the district court did not advise him of the elements of the crime during its canvass. A defendant is not permitted "to challenge the validity of a guilty plea on direct appeal from the judgment of conviction,"³ and this court will not consider such a challenge unless the "error clearly appears from the record."⁴ During the plea canvass, Hubbard's attorneys informed the court that they had thoroughly discussed the charge with Hubbard and that he fully understood the charge. They also expressly waived receiving a copy of the amended criminal information. Accordingly, we conclude that the alleged error does not clearly appear from the record, and we decline to consider this claim.

Finally, Hubbard claims that prosecutorial misconduct resulted in the maximum sentence. He contends that after an interview with the victim, the Division of Probation and Parole amended its presentence investigation report by increasing its recommended sentence. And he argues that the Division's decision to increase the sentence recommendation could only be the product of prosecutorial misconduct.


³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), superceded by statute on other grounds as stated in Hart v. State, 116 Nev. 588, 1 P.3d 969 (2000).

⁴Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994).

The failure to object to prosecutorial misconduct below precludes appellate review unless the alleged misconduct is considered plain error.⁵ Hubbard did not object to the prosecutor's conduct or the amended presentence report, and he fails to specify how the State exceeded the boundaries of proper prosecutorial conduct. Moreover, Hubbard was not prejudiced by the presentence report as he received the sentence he bargained for in his written plea agreement. Accordingly, we conclude that no plain error occurred.

For the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael R. Griffin, District Judge
Kay Ellen Armstrong
Crowell Susich Owen & Tackes
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

⁵Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995).