IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER D. MACK A/K/A CHRISTOPHER D'SHAWN MACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43871

FILED

APR 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,[1] of two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant Christopher D. Mack to serve two consecutive prison terms of 48-120 months for each of the two counts to run concurrently with each other and the sentences imposed in unrelated cases, and ordered him to pay $2,113.00 in restitution.

Mack's sole contention on appeal is that, pursuant to NRS 189.007, he should have been charged with the use of a deadly weapon in a separate count.[2] Mack also cites to NRS 207.010, the habitual criminal statute, for the proposition that "an additional count must be filed in order

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[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

[2]NRS 189.007 states that "[a]ny complaint, upon motion of the defendant, may be dismissed by the justice of the peace upon any of the following grounds: . . . . 2. That more than one offense is charged in any one count of the complaint."

to charge a defendant with an enhancement." We disagree with Mack's contention.

Initially, we note that Mack waived any challenges to the sufficiency of the charging document by the entry of his nolo contendere plea. This court has stated that, generally, the entry of a plea waives any right to appeal from events occurring prior to the entry of the plea.[3] "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."[4] Although Mack claims that the issue was in fact preserved for review on appeal and "by a written motion," our review of the record reveals that no such motion was ever filed below. Further, Mack never objected at his arraignment, sentencing hearing, or at any point in the proceedings below to the sufficiency of the charging document.

Additionally, we conclude that Mack's contention is without merit. The deadly weapon enhancements were properly charged pursuant to NRS 193.165, which states in pertinent part:

> 1. [A]ny person who uses a firearm or other deadly weapon . . . in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section

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[3]See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

[4]Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)); see also Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (no contest pleas waived constitutional claims based on events occurring before entry of the pleas).

> runs consecutively with the sentence prescribed by statute for the crime.
>
> 2. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

Emphasis added. In Mack's case, the enhancements were not charged as separate offenses but rather as additional penalties for the use of the deadly weapon during the commission of the counts of robbery. In fact, this court has disapproved of the practice of charging deadly weapon enhancements as separate offenses in separate counts.[5] And finally, this court has also stated that the deadly weapon enhancement statute, NRS 193.165, is constitutional and does not offend the Due Process Clause of the Fourteenth Amendment.[6]

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

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[5]See Raby v. State, 92 Nev. 30, 544 P.2d 895 (1976).

[6]See Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975); see also U.S. Const. amend. XIV.

cc: Hon. Nancy M. Saitta, District Judge
Sciscento & Montgomery
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk