

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIANNE KENNETH BARBEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43984

**FILED**

MAR 04 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of failure to register as a sex offender. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Tianne Kenneth Barbee to serve a prison term of 12 to 36 months and then suspended execution of the sentence, placing him on probation for a time period not to exceed 3 years.

Barbee's sole contention is that the district court erred in denying his oral presentence motion to withdraw the guilty plea because the State failed to meet a contingency of the plea bargain by providing Barbee with proof of the prior conviction. We decline to consider Barbee's contention.

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.<sup>1</sup>

In this case, just prior to sentencing, defense counsel objected to the State's proof of the prior conviction and asked that the "sentence be


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<sup>1</sup>Bryant 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).

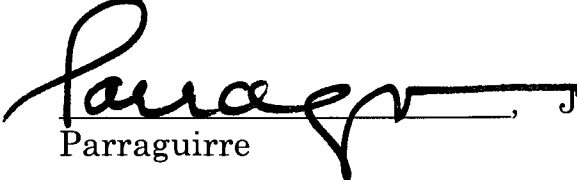
set aside." In response, the State conceded that the "plea was contingent on the State coming forward with certified documents" and therefore it would not object to Barbee withdrawing his plea since the State had not yet received the evidence necessary to establish the validity of the prior conviction. Despite the State's concession that a contingency of the plea bargain had not been met, neither defense counsel nor Barbee ever asked to withdraw the guilty plea prior to sentencing. Because Barbee failed to challenge the validity of his guilty plea in the district court, we conclude that his claim is not appropriate for review on direct appeal from the judgment of conviction.<sup>2</sup> Should Barbee wish to move to withdraw his guilty plea and face trial on the original charge, he may either file a motion to withdraw his plea or a post-conviction petition for a writ of habeas corpus.

Having considered Barbee's contention and concluded that it is not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>2</sup>Bryant, 102 Nev. at 272, 721 P.2d at 368.

cc: Hon. Steven P. Elliott, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk