

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN DALE PEACOCK A/K/A SALTY
VANKIRK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44057

FILED

MAR 03 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of fourteen counts of grand larceny of personal property with a value of less than \$2,500.00. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Brian Dale Peacock to serve fourteen concurrent prison terms of 24 to 60 months.

Peacock's sole contention is that his nolo contendere plea was not knowing and intelligent because he was misinformed about the potential sentence. We decline to consider Peacock's contention. Generally, this court will not consider a challenge to the validity of the guilty plea on direct appeal from the judgment of conviction.¹ "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."²

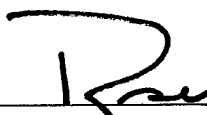
¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).

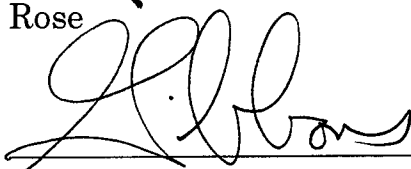
²Bryant, 102 Nev. at 272, 721 P.2d at 368.


In this case, there is no allegation, or indication in the record on appeal, that Peacock previously raised the issue involving the validity of his nolo contendere plea in the district court. Accordingly, we conclude that Peacock must bring his challenge to the validity of his plea in the district court in the first instance.

Having concluded that Peacock's contention is not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.


_____, J.

Rose

_____, J.

Gibbons

_____, J.

Hardesty

cc: Hon. Robert E. Estes, District Judge
Churchill County Public Defender
Paul G. Yohey
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk