

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLEN HARDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44129

FILED

JUN 01 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 plea of nolo contendere,¹ of one count of attempted violation of lifetime supervision. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. The district court sentenced appellant to a prison term of 12 to 36 months. The district court suspended the sentence and placed appellant on probation for a period of three years.

Appellant contends that the district court erred by denying his motion to dismiss the charge against him. Although this court does not have a copy of the plea agreement in this case, appellant informs this court, and the State concedes, that he reserved the right to challenge the district court's denial of his motion to dismiss.²

¹Appellant 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).

²See NRS 174.035(3).

Appellant was originally convicted, pursuant to a guilty plea, of four counts of lewdness with a minor under the age of 14. Appellant served approximately three years in prison and was discharged from custody on December 4, 2000. Upon his release, appellant signed a lifetime supervision agreement with 20 standard conditions, and special conditions A-P. Sometime after that, appellant was arrested for violations of the lifetime supervision agreement. In particular, it was alleged that appellant violated conditions A-P, that he did not report a change of address, that he was not reporting to his supervising officer, and had been charged in 2 new cases. The district court ordered that conditions A-P did not apply to appellant, and ordered that appellant continue on lifetime supervision. The district court further ordered appellant to begin reporting to his supervising officer, and informed appellant that if he did not report, he would be charged with violating the lifetime supervision agreement.

On January 24, 2003, because appellant had not been reporting, his supervising officer went to appellant's residence and knocked on the door. No one answered the door, and law enforcement officers entered the residence pursuant to the search clause. Appellant was discovered hiding in a closet, and was subsequently charged with violating the terms of his lifetime supervision agreement.

Appellant filed a motion to dismiss, arguing that the State was attempting to enforce the requirements of lifetime supervision under NRS 176.0931, rather than the older statute, NRS 176.113. At the time appellant committed his offenses, NRS 176.113 was the applicable statute

for lifetime supervision. On July 1, 1997, the statute was amended and subsequently renumbered as NRS 176.0931.³

The district court rejected appellant's argument, noting that appellant was not charged with a violation of either NRS 176.113 or NRS 176.0931. Rather, appellant was charged pursuant to NRS 213.1243(3), which provides, in part, that "[a] person who violates a condition imposed on him pursuant to the program of lifetime supervision is guilty of a category B felony." Appellant does not argue that he was not subject to lifetime supervision, nor does he refute the allegation that he failed to report as required by his lifetime supervision agreement. We therefore conclude that the district court did not err by denying the motion to dismiss.

Appellant further argues that NAC 213.290⁴ conflicts with NRS 213.1243, and that the regulations and statutes give the Division of Parole and Probation "vague and unfettered authority." Because appellant raises these issues for the first time on appeal, we decline to consider them.⁵


³1997 Nev. Stat., ch. 451 § 85, at 1671.


⁴NAC 213.290 contains the regulations which the Division of Parole and Probation must follow in administering a program of lifetime supervision.

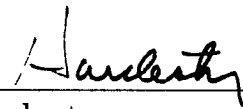
⁵McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

Having considered appellant's arguments and concluded that they are either without merit or not appropriate for consideration on appeal, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Robert W. Lane, District Judge
Nye County Public Defender
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Nye County Clerk