

IN THE SUPREME COURT OF THE STATE OF NEVADA


STEVEN GALLEGOS RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45102

FILED

NOV 14 2005

ORDER OF REMAND

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

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant to serve a prison term of 12 to 30 months.

On February 10, 2005, the district court entered a judgment of conviction imposing a prison sentence of 12 to 60 months, but suspended execution of the sentence and placed appellant on probation for a period not to exceed three years. Appellant was remanded to the Nevada Department of Corrections so that he could complete one of the conditions of his probation, the program of regimental discipline known as boot camp.

On March 17, 2005, appellant was returned to district court by the Nevada Department of Corrections because it was discovered that he had an outstanding warrant for robbery in another state rendering him ineligible for the boot camp program. The district court then resentenced appellant, imposing a prison term of 12 to 30 months instead of probation.

Appellant contends that the district court lacked jurisdiction to resentence him because he had already begun serving his sentence, on February 10, 2005, when the district court entered the original judgment of conviction. The State first argues that appellant waived his right to

challenge the district court's jurisdiction by pleading guilty. We disagree and note that a defendant who has pleaded guilty may pursue an appeal challenging the jurisdiction of the sentencing court.¹

The State further argues that the district court had jurisdiction to resentence appellant because the original sentence imposed was "invalid and illegal." Specifically, the State argues that "[p]ursuant to NRS 176A.780, the district court should not have sentenced appellant until after [he] either satisfactorily completed boot camp or was returned because of his ineligibility for the program."

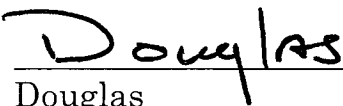
As an initial matter, we note that the district court erroneously sentenced appellant before he had attended boot camp. NRS 176A.780 contemplates that sentencing is deferred until the defendant completes boot camp or is deemed to be ineligible for the program. We therefore conclude that the original sentence imposed was invalid because it is contrary to the statute.

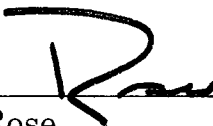
The actual, underlying problem in this matter, however, is that there is doubt about the voluntariness of appellant's plea. It appears from the record before this court that part of the inducement for appellant's guilty plea was that he would be allowed to attend boot camp. Because appellant had an outstanding warrant, it was impossible for him to obtain the benefit of the bargain. "[W]here the provisions of the plea agreement or bargain later become unenforceable, the plea is involuntary. This is true even though the State or the court never did have the

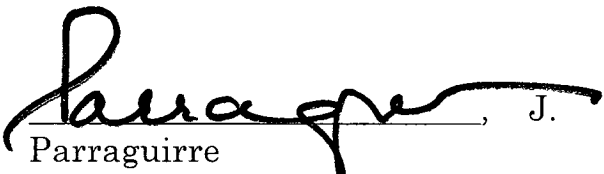
¹See NRS 177.015(4); see also Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) (holding that direct appeal claims not raised on direct appeal are waived in subsequent proceedings), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

authority to ensure compliance with the plea bargain."² We therefore conclude that appellant should be given the opportunity to withdraw his plea, should he so desire.³ Accordingly, we

ORDER this matter REMANDED to the district court for proceedings consistent with this order.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
S. Shane Mayfield & Associates
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

²Ex parte Austin, 746 S.W.2d 226, 227 (Tex. Crim. App. 1988) (citation omitted).

³Should appellant decline to withdraw his plea, the second sentence imposed by the district court is affirmed.