

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CLARENCE BLACKWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45244

FILED

JAN 11 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of attempted battery causing substantial bodily harm. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

While driving at speeds in excess of the posted speed limit, appellant William Blackwood lost control of his car and collided with a power pole and a fence. Blackwood's passenger was seriously injured, and Blackwood was subsequently charged with reckless driving causing substantial bodily harm. After the district court denied his pretrial petition for a writ of habeas corpus, Blackwood entered into negotiations with the State. He ultimately agreed to plead guilty to one felony count of attempted battery causing substantial bodily harm and one gross misdemeanor count of attempted battery causing substantial bodily harm.¹ This agreement was made with the understanding that one of the two counts would be dismissed at the time of sentencing. At sentencing,

¹See NRS 200.481(2)(b) (providing that battery causing substantial bodily harm is a category C felony); NRS 193.330(1)(a)(4) (providing that an attempt to commit a category C felony is punished as either a category D felony or as a gross misdemeanor).

the district court dismissed the gross misdemeanor count and sentenced Blackwood to serve a prison term of 12 to 30 months for the felony count. It further ordered the sentence suspended and placed Blackwood on probation for a period not to exceed 24 months. This appeal follows.

First, Blackwood contends that the district court abused its discretion by failing to inform him prior to accepting his guilty plea that it intended to impose the felony sentence. We construe this contention as a challenge to the validity of the guilty plea, and we have previously held that such challenges must be raised in the district court in the first instance through either a motion to withdraw the guilty plea or a post-conviction petition for a writ of habeas corpus.² Accordingly, this issue is not appropriate for review on direct appeal.

Second, Blackwood contends that he was denied substantive due process because NRS 193.330 lacks any standards or guidelines to assist the district court in determining whether a defendant should be sentenced for a felony or a gross misdemeanor. We disagree. A person who has been convicted "is eligible for, and the court may impose, whatever punishment is authorized by statute for his offense, so long as that penalty is not cruel and unusual, and so long as the penalty is not based on an arbitrary distinction that would violate the Due Process Clause of the Fifth Amendment" of the United States Constitution.³ The

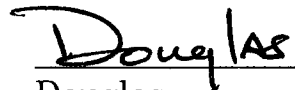
²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002).


³Chapman v. United States, 500 U.S. 453, 465 (1991) (internal citations omitted).

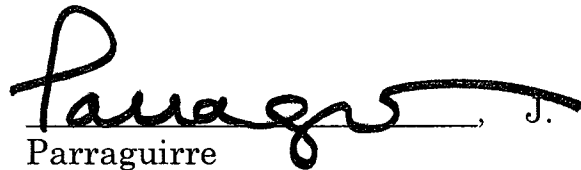
narrow range of punishments prescribed by NRS 193.330 is rationally related to the Legislature's interest in providing the district court with sentencing discretion.⁴ NRS 193.330 provides specific sentencing guidelines for each category of attempted felony and for attempted misdemeanors, gross misdemeanors, and felonies that do not have a category. Therefore, we conclude that it adequately guides the district court's sentencing decisions, and that it is not arbitrary or unconstitutionally vague.⁵

Having considered Blackwood's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

⁴See generally Martinez v. State, 114 Nev. 735, 961 P.2d 143 (1998).

⁵See Matter of T.R., 119 Nev. 646, 653, 80 P.3d 1276, 1280-81 (2003) ("The law must . . . provide explicit standards for those who apply them to avoid arbitrary and discriminatory enforcement."); Villanueva v. State, 117 Nev. 664, 667, 27 P.3d 443, 445 (2001) (quoting United States v. Batchelder, 442 U.S. 114, 123 (1979)) ("to survive a void-for-vagueness challenge, sentencing provisions need only 'state with sufficient clarity the consequences of violating a given criminal statute'").

cc: Hon. Steven P. Elliott, District Judge
Walter B. Fey
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk