

IN THE SUPREME COURT OF THE STATE OF NEVADA


ZEANOUS THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46271

FILED

JUL 13 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of two counts of sexual assault on a minor under the age of 16. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Zeanous Thompson to serve two consecutive prison terms of 5 to 20 years.

Thompson contends that the form plea agreement set forth in NRS 174.063 is unconstitutional. In particular, Thompson contends that the statutory requirement that a defense attorney certify that the guilty plea is supported by the facts violates his constitutional right to counsel and unethically intrudes into the attorney-client relationship.¹ Likewise,

¹NRS 174.063(2) provides, in relevant part, that defense counsel must certify that: "All pleas of guilty offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant."

Thompson contends that the statutory requirement that a criminal defendant state that he is satisfied with the services of defense counsel is "an unconstitutional burden on the right to plead guilty" because the clause "was clearly designed to impeach [the defendant] at a later time should he attempt to allege ineffective assistance of counsel."² Citing to Manley v. State,³ Thompson contends that the unconstitutionality of NRS 174.063 constitutes structural error warranting reversal of his conviction.

We decline to consider Thompson's contentions because he failed to preserve the issues for appellate review. Thompson failed to challenge the constitutionality of NRS 174.063 in the district court and raises the contention for the first time on appeal.⁴ Moreover, Thompson signed the written plea agreement without objection or modification, and

²NRS 174.063(1) requires, in relevant part, that the defendant acknowledge: "My attorney . . . has answered all my questions regarding the guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney."


³115 Nev. 114, 979 P.2d 703 (1999) (holding that prosecutor's cross-examination of the defendant about conversations with his defense attorney violated the attorney-client privilege and the constitutional right to counsel and constituted structural error warranting reversal of appellant's conviction).


⁴See McKenna 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.").

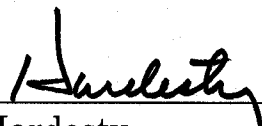
without expressly preserving in writing the right to challenge the constitutionality of NRS 174.063 on appeal.⁵ Finally, we disagree with Thompson that this case involves structural error, as occurred in Manley, because there was no impermissible government interference in the attorney-client relationship and no disclosure of confidential communications made in the course of representation.

Having considered Thompson's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

⁵See NRS 174.035(3).

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk