IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE LEE A. GATES, DISTRICT JUDGE,
Respondents,
and
LAMARR ROWELL,
Real Party in Interest.

No. 50506

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE LEE A. GATES, DISTRICT JUDGE,
Respondents,
and
JUSTIN KIM WOODWARD,
Real Party in Interest.

No. 50513

FILED

AUG 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITIONS

These consolidated original petitions for writs of prohibition challenge the district court's acceptance of the real parties in interest's guilty pleas in two criminal cases. At this court's direction, the real parties in interest, Lamarr Rowell and Justin Kim Woodward, answered the petitions. Having considered the petitions and answers, we conclude that our intervention is not warranted.

08-20991

The State charged Rowell with one count of burglary and one count of grand larceny. When Rowell appeared for trial, his counsel indicated that Rowell wanted to plead guilty to both charges. At that time, the district court indicated that it would allow Rowell to preserve his right to appeal the denial of his suppression motion and would impose concurrent sentences. The district court also indicated that it would be inclined not to adjudicate Rowell as a habitual criminal but informed Rowell that the State would be free to argue for such treatment as there had been no negotiations. The district court canvassed Rowell regarding his plea, the charges and penalties, and the rights he was waiving and accepted the guilty plea.

The State charged Woodward with one count each of attempted home invasion, burglary, possession of a credit or debit card without the cardholder's consent, and possession of stolen property. When Woodward appeared for a calendar call, his counsel indicated that Woodward wanted to plead guilty to all of the charges. At that time, the district court indicated that it would be inclined not to adjudicate Woodward as a habitual criminal but informed Woodward that the State would be free to argue for such treatment as there had been no negotiations. The district court canvassed Woodward regarding his plea, the charges and penalties, and the rights he was waiving and accepted the guilty plea.

The State challenges the district court's conduct in these matters through the instant petitions for writs of prohibition. A writ of prohibition may issue to arrest the proceedings of a district court

exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.[1] Petitions for extraordinary writs are addressed to the sound discretion of the court.[2] A writ of prohibition may issue only where there is no plain, speedy, and adequate remedy at law.[3]

The State argues that the district court exceeded its jurisdiction by engaging in plea negotiations with defense counsel in violation of this court's decision in Cripps v. State.[4] We disagree.

In Cripps, this court adopted a bright-line rule precluding a trial judge from participating in plea negotiations between the State and the defense in a criminal prosecution because such participation creates an inherent risk of improper judicial coercion of a guilty plea.[5] We recognized one exception to that rule: the court may indicate whether it would be inclined to follow the parties' proposed sentencing recommendation.[6] We also expressly prohibited "off-the-record discussions between the parties and the judge respecting the plea negotiations" and therefore required that "[w]hen the district court participates to any

---

[1]NRS 34.320.

[2]State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).

[3]NRS 34.330.

[4]122 Nev. 764, 137 P.3d 1187 (2006).

[5]Id. at 770, 137 P.3d at 1191.

[6]Id. at 770-71, 137 P.3d at 1191.

degree in the plea process, the judge shall ensure that such participation is placed on the record and transcribed."[7]

The district court has jurisdiction to accept a guilty plea.[8] Nothing in Cripps deprives the district court of that jurisdiction; rather, Cripps limits the district court's participation in plea negotiations between the State and the defendant in order to avoid judicial coercion of a guilty plea. And while the district court has discretion to reject a guilty plea,[9] it is not required to do so simply because the plea was not negotiated or the State objects to the plea. In such circumstances, the district court should consider whether accepting the unilateral guilty plea would undermine prosecutorial discretion in charging or the State's interest in obtaining a conviction on other charges.[10] For example, this court has observed that a trial court may properly reject a unilateral guilty plea to a lesser charge that would preclude prosecution for a greater charge.[11]

In these cases, the district court accepted guilty pleas to all of the charges against Rowell and Woodward. The protections afforded in

---

[7]Id. at 770, 137 P.3d at 1191.

[8]See NRS 174.035(1).

[9]NRS 174.035(1) ("The court may refuse to accept a plea of guilty or guilty but mentally ill.").

[10]See State v. Dist. Ct., 116 Nev. 127, 139 n.10, 994 P.2d 692, 699-700 n.10 (2000).

[11]Id.; see also Jefferson v. State, 108 Nev. 953, 954, 840 P.2d 1234, 1235 (1992) (concluding that district court did not abuse discretion by refusing to accept defendant's unilateral guilty plea to lesser charge of larceny from the person when State had charged defendant with robbery).

Cripps primarily are intended to protect the defendant from judicial coercion of a plea bargain, not to protect the State. Neither defendant has challenged the pleas as having been coerced by the district court. And the State has not demonstrated that the district court's acceptance of the pleas undermined its prosecutorial discretion or its interest in obtaining a conviction on other charges.

To the extent that the State's concern is with the district court's statements about its inclination regarding sentencing, we conclude that the district court did not exceed its jurisdiction. In general, the district court has sole discretion to determine the appropriate sentence within the parameters of the applicable sentencing statute.[12] And with respect to habitual criminal adjudication in particular, NRS 207.010(2) provides that "[i]t is within the discretion of the prosecuting attorney whether to include" a habitual criminal count, but the statute further provides that it is within the trial judge's discretion to dismiss a habitual criminal count. Accordingly, this court has held that whether to sentence a defendant as a habitual criminal is entirely within the district court's discretion.[13] Here, the district court did not interfere with the State's discretion to include a habitual criminal count as the State had filed an appropriate notice in each case. Rather, the district court's statements

---

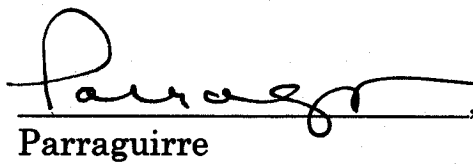
[12]See, e.g., Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).

[13]See O'Neill v. State, 123 Nev. 9, 15-16, 153 P.3d 38, 42-43 (2007) (explaining that district court has discretion to dismiss habitual criminal count and, in exercising that discretion, the court "may consider facts such as a defendant's criminal history, mitigation evidence, victim impact statements and the like in determining whether to dismiss such a count").

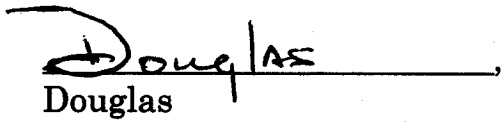
about sentencing merely indicated its inclination in exercising its discretion—a matter entirely within the district court's jurisdiction. The district court also explicitly informed Rowell and Woodward that they had not been guaranteed any particular sentence and that the State would be free to argue at sentencing. Although the district court in these matters should have ensured that all of its discussions with counsel regarding the real parties' decisions to plead guilty were placed on the record and transcribed,[14] we do not perceive the failure to do so as being in excess of the district court's jurisdiction.

For these reasons, we conclude that this court's intervention is not warranted and therefore we

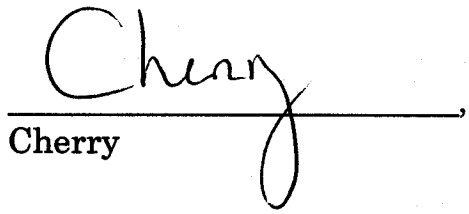
ORDER the petitions DENIED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Cherry

[14]See Cripps, 122 Nev. at 770, 137 P.3d at 1191 ("[B]ecause of the inherent risks involved, as well as the difficulties in reviewing claims on appeal of improper judicial coercion, we conclude that henceforth all off-the-record discussions between the parties and the judge respecting the plea negotiations shall be expressly prohibited. When the district court participates to any degree in the plea process, the judge shall ensure that such participation is placed on the record and transcribed.").

cc: Hon. Lee A. Gates, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Ciciliano & Associates, LLC
Clark County Public Defender Philip J. Kohn
Eighth District Court Clerk