

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRECK WARDEN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52038

BRECK WARDEN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52039

FILED

SEP 03 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

These are appeals from judgments of conviction, pursuant to guilty pleas. Docket No. 52091 is an appeal from a judgment of conviction for one count of grand larceny auto. Docket No. 52039 is an appeal from a judgment of conviction for one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court adjudicated appellant Breck Warden Smith a habitual criminal in both cases and sentenced him to serve two concurrent prison terms of 10 years to life.

On appeal, Smith contends in both appeals that (1) his guilty pleas were invalid because he was not informed that he was ineligible for parole and (2) the district court abused its discretion at sentencing by relying on a presentence investigation report that was deficient and contained errors and by not considering his methamphetamine addiction.

Validity of guilty pleas

First, Smith contends that his guilty pleas were invalid. This court does not permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986). "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding." Id. at 272, 721 P.2d at 368. We conclude that Smith's challenge to his guilty plea may not be entertained on direct appeal because he did not bring the claim in the district court in the first instance.

Alleged sentencing errors

Smith contends that the district court abused its discretion at sentencing by (1) relying on a presentence investigation report that was deficient and contained errors and (2) not considering his methamphetamine addiction.

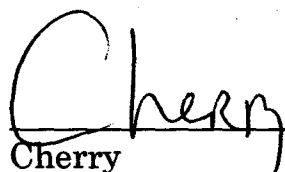
We conclude that the district court did not abuse its discretion. See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (recognizing that this court will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence").

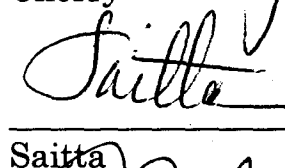
Smith contends that the presentence investigation report incorrectly reported the names of defense counsel, sentencing date, and Smith's age and that the report "elongated" his criminal history by including misdemeanors and separating charges in order to create an appearance of a longer criminal record. During his sentencing hearing,

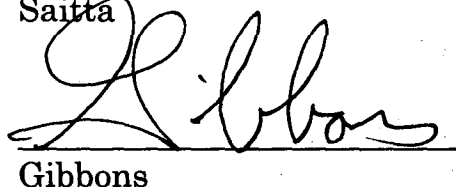
Smith informed the court that the presentence investigation report contained factual errors; however, he admitted that the errors were trivial. After acknowledging that the report had errors, the district court stated that it was imposing the sentence to which Smith had stipulated. Regarding Smith's claim that the report was formatted to give the appearance of a longer criminal history, Smith does not contend that the information regarding his arrests and convictions is erroneous. Further, prior to his sentencing, Smith informed the district court that all of his prior convictions were related to his methamphetamine addiction, so the district court was aware of this information. The district court sentenced Smith to the terms he had stipulated to and stated on the record that although it did not consider Smith to be a violent criminal, it did not consider his crimes to be victimless. Thus, Smith did not demonstrate that the district court relied on impalpable or highly suspect evidence. Consequently, the district court did not abuse its discretion in sentencing Smith on the grounds he asserts.

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

ORDER the judgments of conviction AFFIRMED.


Cherry J.


Saitta J.


Gibbons J.

cc: Hon. Valerie Adair, District Judge
Law Office of Betsy Allen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk