

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN KIM WOODARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52661

FILED

JUN 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of 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. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Justin Kim Woodard to serve consecutive and concurrent prison terms totaling 64 to 120 months.

Woodard contends that the district court's denial of his pretrial motion to suppress two on-scene identifications violated his due process rights.

Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)). There is a statutory exception, however, to this general principle. NRS 174.035(3) provides that, "[w]ith the consent of the court

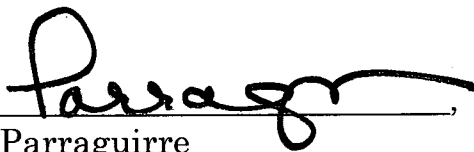
and the district attorney, a defendant may enter a conditional plea of guilty . . . reserving in writing the right [to appeal] the adverse determination of any specified pretrial motion.”

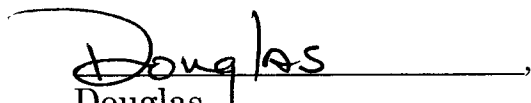
In the instant case, Woodard entered an unconditional guilty plea on the day his jury trial was scheduled to commence, over a month after the district court denied his motion to suppress the two identifications. Woodard did not enter a conditional plea pursuant to NRS 174.035(3) and therefore did not preserve his right to appeal the district court’s denial of his motion to suppress. Accordingly, we decline to consider the merits of Woodard’s contention because his claim was waived when he entered his guilty plea.

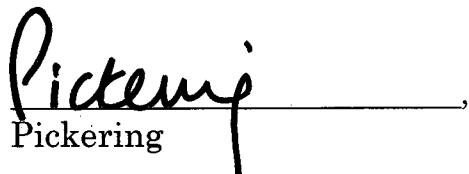
To the extent Woodard contends that NRS 174.035(3) unconstitutionally deprived him of his right to appeal, we conclude this claim lacks merit. Rather than restricting the right to appeal, the statute in question actually expands the right by allowing defendants, under some circumstances, to raise issues that would have been otherwise waived.

Having concluded that Woodard did not preserve his issue for review on appeal, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Eighth Judicial District Court Dept. 8, District Judge
Ciciliano & Associates, LLC
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk