

IN THE SUPREME COURT OF THE STATE OF NEVADA

QUENTIN SHAWN HENDRICKS,

No. 35104

Appellant,

**FILED**

vs.

JUL 06 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

Respondent.

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of lewdness with a child under the age of 14. The district court sentenced appellant to two consecutive life terms with parole eligibility after 10 years and imposed a special sentence of lifetime supervision.

Appellant's sole contention is that the district court erred in accepting appellant's guilty plea without sua sponte holding a competency hearing. Particularly, appellant contends that there was evidence presented in his psychosexual evaluation that raised a bona fide doubt about his competency to enter a guilty plea including evidence that: (1) appellant was on medication for high blood pressure, depression, and joint pain; (2) had reported that he had previously attempted suicide; (3) was depressed and possibly suffering from post-

traumatic stress disorder; and (4) had a violent family background.

We decline to address appellant's contention concerning his competency to enter his guilty plea because this contention raises factual issues that are best addressed by the district court in the first instance.<sup>1</sup> Although in rare instances we have reviewed the validity of a plea on direct appeal where the face of the record revealed clear errors of law,<sup>2</sup> the record before us contains no such evidence. We cannot conclude that the district court should have held a competency hearing as a matter of law in this case as the record reveals evidence of appellant's lucidity, including among other things, evidence that appellant personally advocated for a concurrent sentence pointing out his lack of criminal history.<sup>3</sup> Therefore, whether appellant was competent to enter his guilty pleas is a factual issue for

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<sup>1</sup>See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

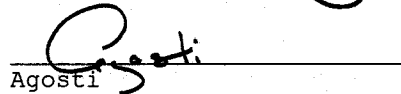
<sup>2</sup>See Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989); Smith v. State, 110 Nev. 1009, 1011 n.1, 879 P.2d 60, 61 n.1 (1994).

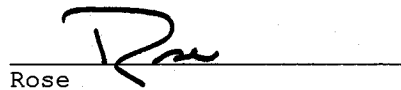
<sup>3</sup>See Dusky v. United States, 362 U.S. 402, 402 (1960) (holding that the standard of competency is whether a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him").

the district court's consideration.<sup>4</sup> Having declined to consider this issue, we

ORDER this appeal DISMISSED.

  
Shearing J.

  
Agosti J.

  
Rose J.

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<sup>4</sup>We note the unusual procedural history of this case. On October 22, 1998, appellant pleaded guilty to two counts of lewdness with a child under the age of 14. The first judgment of conviction was entered February 4, 1999. Thereafter, on April 15, 1999, appellant filed a motion to modify his sentence, contending that the person who conducted his psychosexual evaluation was not qualified to do so. This motion was unopposed by the State. It is unclear from the record before us whether the district court ever issued a formal order vacating appellant's February 4, 1999 conviction. A new psychosexual examination was scheduled, however, and the matter was continued.

In the interim, on July 13, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. On October 4, 1999, the district court entered an order denying appellant's petition for a writ of habeas corpus. Thereafter, on October 18, 1999, the district court entered its second judgment of conviction, which presumably supplanted the February 4, 1999 judgment of conviction.

Appellant then filed a proper person notice of appeal from the judgment of conviction arising from the January 11, 1999, sentencing hearing. On January 7, 2000, this court issued an order appointing counsel and electing to treat appellant's appeal as a direct appeal from the second judgment of conviction entered on October 18, 1999. Because this is a direct appeal, we do not reach the issues raised in appellant's post-conviction petition filed July 13, 1999.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General  
Clark County District Attorney  
Gloria M. Navarro  
Clark County Clerk