

IN THE SUPREME COURT OF THE STATE OF NEVADA

THAYER BURTON A/K/A THAYER
JOSEPH BURTON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56639

FILED

MAR 21 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

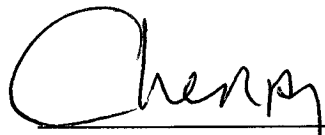
This is an appeal from a judgment of conviction, pursuant to an Alford plea, of conspiracy to commit robbery and robbery. North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Doug Smith, Judge.


Appellant Thayer Burton contends that the district court abused its discretion at sentencing because it relied on his refusal to admit guilt and show remorse in determining his sentence in violation of the Fifth Amendment to the United States Constitution. Burton did not object on this basis at the sentencing hearing, therefore we review for plain error. See Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 507 (2009).

The imposition of a harsher sentence due to a defendant's refusal to admit guilt violates a defendant's Fifth Amendment rights and constitutes an abuse of discretion. Brown v. State, 113 Nev. 275, 291, 934 P.2d 235, 245 (1997); Bushnell v. State, 97 Nev. 591, 593, 637 P.2d 529, 531 (1981). The district court imposed a harsher sentence on Burton because he did not "man up" by pleading guilty. We conclude that the district court plainly erred by considering Burton's refusal to admit guilt.

Further, because the district court stated that it would have considered running the sentence concurrent to another sentence if Burton had not entered an Alford plea, we conclude that the error affected Burton's substantial rights, see Mendoza-Lobos, 125 Nev. at ___, 218 P.3d at 507, and that he must be resentenced by another district court judge. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for resentencing before a different district court judge.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Doug Smith, District Judge
Wendy D. Leik
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk