

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID D. SHUMEY A/K/A LOUIS
WILLIAM GARCIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35176

FILED

AUG 24 2001

JANET M. BLOOR
CLERK OF COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of using a minor in the production of pornography and one count of sexual assault of a minor under the age of 16 years. The district court sentenced appellant to serve three concurrent terms of life in prison with the possibility of parole. The district court also imposed a special sentence of lifetime supervision to commence upon appellant's release from any term of probation, parole or imprisonment. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant's sole contention is that his guilty plea is invalid because the district court improperly participated in the plea negotiation process. Appellant relies on this court's decision in Standley v. Warden¹ and the Ninth Circuit's decision in United States v. Bruce.² We conclude that appellant's contention lacks merit.

As an initial matter, we note that appellant's contention is a challenge to the validity of his guilty plea. As such, it is not appropriate for review on direct appeal and

¹115 Nev. 333, 990 P.2d 783 (1999).

²976 F.2d 552 (9th Cir. 1992).

must be raised in the district court in the first instance by commencing a post-conviction proceeding or filing a motion to withdraw the guilty plea.³ We will nonetheless consider the merits of the claim at this time because it can be resolved based on the record before this court.

In Standley, the trial court engaged the defendant in a lengthy discussion about the State's plea offer, which the defendant had not accepted at that time. During that discussion, the trial court compared the sentencing consequences that the defendant faced if convicted at trial with the consequences he faced if he accepted the plea offer and strongly suggested that the plea offer was in the defendant's best interest. The trial court allowed the defendant to discuss the matter with his attorney during a recess, and the defendant then decided to accept the offer.⁴ On appeal, this court held that the trial court improperly coerced the defendant to accept the State's plea offer.⁵

Similarly, in Bruce, the trial court discussed a proposed plea agreement with the defendant and prosecutor. At the time, the defendant had not accepted the government's offer. The trial court pointed out the severity of the sentence that the defendant faced if he was convicted after a trial compared with the sentence that he faced as a consequence of the plea offer and suggested that he think carefully about accepting the offer. The following day, the defendant accepted the offer.⁶ On appeal, the Ninth Circuit

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁴115 Nev. at 333-36, 990 P.2d at 783-84.

⁵Id. at 336-37, 990 P.2d at 784-85.

⁶976 F.2d at 555.

held that the trial court improperly participated in the plea discussions.⁷

Unlike the defendants in Standley and Bruce, appellant had accepted the State's plea offer before the colloquy about which he now complains. On the first day of trial, defense counsel informed the district court that appellant intended to enter a guilty plea and stated the terms of the plea negotiations. Appellant acknowledged those negotiations and stated that he wished to plead guilty. The district court then conducted a thorough plea canvass. Appellant focuses on several instances during the plea canvass to demonstrate that the district court improperly participated in the plea negotiation process.

During the plea canvass, the district court ascertained that appellant understood the severity of the sentences he faced as a result of the guilty plea and explained that if the court imposed the maximum sentences and ran them consecutively, appellant would have to serve 30 years before being eligible for parole. At no time did the district court compare the consequences of the guilty plea with that of going to trial in an attempt to coerce or motivate appellant to accept the plea offer. Rather, appellant had already accepted the offer and the district court merely sought to discharge its obligation of ensuring that appellant understood the consequences of that decision.

Later in the canvass, the district court judge indicated that he believed the plea agreement was in appellant's best interest. However, we again emphasize that appellant had already accepted the State's offer and that

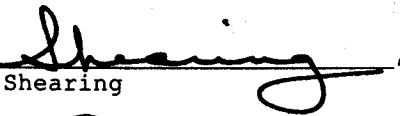
⁷Id. at 555-59.

nothing in the district court's comment could be interpreted as improper participation in the plea negotiations.

Finally, at the conclusion of the plea canvass, the district court took a brief recess to allow the State to put the agreement in writing and to give appellant the opportunity to review the written agreement with defense counsel. Again, we conclude that, unlike in Standley and Bruce, appellant had accepted the plea offer and indicated his desire to plead guilty before the brief recess to prepare and review the written agreement.

In sum, we conclude that the district court did not improperly participate in the plea negotiation process. Accordingly, we


ORDER the judgment of conviction AFFIRMED.



Shearing J.



Agosti J.



Rose J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
JoNell Thomas
Clark County Clerk