

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIONEL FRED TATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57228

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *A. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

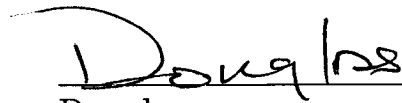
This is an appeal from a district court order denying appellant Lionel Fred Tate's post-conviction petition for a writ of habeas corpus filed pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

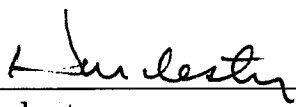
Tate contends that the district court erred by denying his claims that (1) the amended indictment improperly joined offenses that took place more than six months apart, (2) the State was barred from prosecuting him because police officers acted so outrageously by not arresting him after the first offense so as to offend due process, and (3) the State was improperly permitted to amend the indictment without leave of the court. These claims would not have been grounds for relief on direct appeal from the judgment of conviction because, by pleading guilty, Tate waived any errors occurring prior to the entry of his guilty plea and he did not reserve these issues for appeal. See NRS 174.035(3); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975); Tollett v. Henderson, 411 U.S. 258, 267 (1973). And Tate is estopped from challenging the amended indictment because its filing was necessary for him to plead guilty pursuant to the negotiations. See Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 96-97

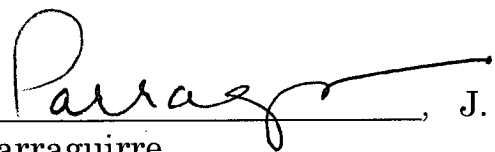
(1998); Carter v. State, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) (“A party who participates in an alleged error is estopped from raising any objection on appeal.”). Thus, the district court did not err by denying these claims.

Tate also appears to contend that his guilty plea was not voluntarily and intelligently entered because he was under pressure to enter the plea and he was unaware of the “defect” in the amended indictment. We conclude that Tate has failed to demonstrate that his plea was not validly entered. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). The totality of the circumstances, as demonstrated by the record, establishes that Tate was not coerced into pleading guilty and was aware of the change to the amended indictment. See State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). Accordingly, we conclude that the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk