

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN JOHN KOZLOWSKI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57404

**FILED**

**JUL 14 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER AFFIRMING JUDGMENT OF CONVICTION AND  
DENYING RESPONDENT'S MOTION TO DISMISS

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence. First Judicial District Court, Carson City; James E. Wilson, Judge.<sup>1</sup>

Appellant Steven John Kozlowski contends that the district court abused its discretion by “failing to conduct a hearing on [his] eligibility and appropriateness for diversion under NRS chapter 484.” See generally NRS 484C.340; NRS 458.300. Initially, we note that Kozlowski was not eligible for diversion due to his 1998 felony DUI conviction in Louisiana, see NRS 484C.340(7)(f), and because NRS 458.300(3) specifically excludes DUI offenders from consideration. More importantly, when asked by the district court at the sentencing hearing about Kozlowski’s application for diversion, defense counsel stated that because of his “medications and the medical needs,” and the expense of a

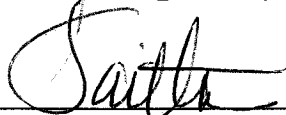
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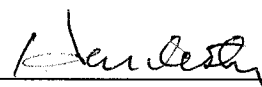
<sup>1</sup>The transcript submitted erroneously states that the Hon. J. Robey Willis in the justice court presided over the sentencing hearing when, in fact, the Hon. James E. Wilson in the district court was the sentencing judge.

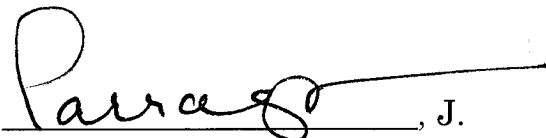
treatment program, diversion “would simply not work” and was no longer “workable.” Defense counsel, instead, asked the district court to impose the minimum sentence of 12-30 months. Therefore, because Kozlowski no longer sought diversion, we conclude that he waived his right to raise any issues on appeal regarding his abandoned application or the district court’s alleged failure to conduct a hearing on the matter.

Finally, the State filed a motion to dismiss Kozlowski’s appeal as frivolous. We deny the State’s motion and point out that although the issues properly raised on appeal may be limited, Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1060 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999), and may even lack merit, a defendant has the right to appeal from a judgment of conviction entered pursuant to a guilty plea, see generally Ramos v. State, 113 Nev. 1081, 1084-85, 944 P.2d 856, 858 (1997). Accordingly, we

ORDER the judgment of conviction AFFIRMED and DENY RESPONDENT’S MOTION TO DIMISS.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James E. Wilson, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk