

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR EDUARDO URIBE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57422

FILED

JUL 15 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of second-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

First, appellant Oscar Eduardo Uribe contends that his guilty plea is invalid. However, Uribe does not claim that he previously challenged the validity of his plea in the district court and the alleged error does not clearly appear on the record; therefore, we decline to consider this contention.¹ See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (generally this court will not permit a defendant to challenge the validity of guilty plea on direct appeal); Smith v. State, 110

¹To the extent that Uribe also raises a claim of ineffective assistance of counsel, we decline to consider it here. See Archanian v. State, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) (“This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless.”).


Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994) (providing an exception to the rule announced in Bryant where the error is clear from the record).

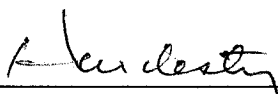
Second, Uribe appears to contend that NRS 62B.330(3) is unconstitutional. “The constitutionality of a statute is a question of law that we review de novo. Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional.” Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006) (internal footnote omitted). Uribe asserts that NRS 62B.330(3) allows juveniles accused of murder to be charged as adults without a process for review or certification by a juvenile court, and he argues that this lack of process is inconsistent with evolving standards of decency and thereby violates the Eighth Amendment’s proscription against cruel and unusual punishment. Uribe relies primarily on Graham v. Florida, 560 U.S. ___, 130 S. Ct. 2011 (2010), and Roper v. Simmons, 543 U.S. 551 (2005), to support this contention. However, neither of these cases addresses the constitutionality of state statutes that place juveniles outside the jurisdiction of the juvenile court for certain offenses and we conclude that Uribe has not met his burden to make a clear showing that NRS 62B.330(3) is unconstitutional.

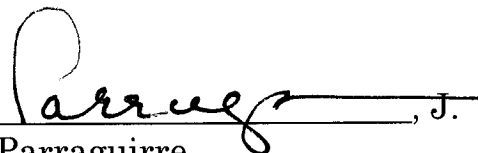
Third, Uribe contends that his sentence to consecutive prison terms of 10 to 25 years for second-degree murder and 60 to 150 months for use of a deadly weapon is unduly harsh given his youth, the fact that he had no prior adult arrests or incarcerations, and the Division of Parole and Probation’s recommendation for a “lower end sentence” on the deadly weapon enhancement. We review a district court’s sentencing determination for abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Because Uribe does not argue that the relevant

penal statutes are unconstitutional, his sentence is within the parameters of those statutes, and we are not convinced that the sentence is grossly disproportionate to the gravity of the offense, we conclude that the sentence does not violate the constitutional proscriptions against cruel and unusual punishment. See NRS 193.165(1); NRS 200.030(5)(b); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

Having concluded that Uribe is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
Law Offices of John P. Springgate
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk