IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL FLANE REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59298

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malave
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted theft. Fifth Judicial District Court, Nye County; Joseph T. Bonaventure, Senior Judge.

Appellant Mitchell Flane Reed entered a conditional guilty plea reserving the right to challenge the denial of his pretrial motion to dismiss. See NRS 174.035(3). Although we review a district court's decision to grant or deny a motion to dismiss for abuse of discretion, Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008), we review constitutional challenges and questions of law de novo, Grey v. State, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008); Bailey v. State, 120 Nev. 406, 407, 91 P.3d 596, 597 (2004).

Reed contends that the State impermissibly engaged in "piecemeal prosecution" in violation of the Double Jeopardy Clause by charging him under a second information after dismissing the first information. We disagree. Because Reed was not tried on the first information, jeopardy never attached, see Shuman v. Sheriff, 90 Nev. 227, 228, 523 P.2d 841, 842 (1974), and Reed was not twice put in jeopardy for the same offense, see U.S. Const. amend. V; State v. Lomas, 114 Nev. 313,

315, 955 P.2d 678, 679 (1998). To the extent Reed uses the term "piecemeal prosecution" to argue that the State was collaterally estopped from bringing the second information, see Ashe v. Swenson, 397 U.S. 436, 444-46 (1970), or that the Double Jeopardy Clause requires compulsory joinder, see id. at 453-54 (Brennan, J., concurring), this contention also lacks merit, see Bobby v. Bies, 556 U.S. 825, 834-36 (2009) (explaining that the rule of collateral estoppel in Ashe only applies to final judgments); United States v. Dixon, 509 U.S. 688, 709 n.14 (1993) (explaining that the rule espoused by Justice Brennan has been consistently rejected by the Court); United States v. Garner, 529 F.2d 962, 971 (6th Cir. 1976) (explaining that compulsory joinder is not a constitutional requirement).

Reed also contends that the State was procedurally barred from bringing the second information. See NRS 178.562(1) (barring another prosecution for the same offense). We disagree. Reed was not charged with the "same offense" in the second information because it involved the fraudulent conversion of different checks than the one charged in the first information. Id. Therefore, this contention lacks merit.

Having considered Reed's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Saitta

_____, J.
Pickering

_____, J.
Hardesty

cc: Chief Judge, Fifth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Gibson & Kuehn
Nye County District Attorney
Nye County Clerk