

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH WINDELL NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59477

FILED

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Handwritten Signature*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND


This is an appeal from a judgment of conviction entered pursuant to a guilty plea of being under the influence of a controlled substance. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.


Appellant Joseph Windell Nelson contends that the district court erred by accepting his guilty plea knowing that it could not legally provide him the benefit of his bargain. Nelson asserts that he bargained for “a concurrent sentence with credit for the overlapping periods of [the] sentence” and argues that there was no possibility of receiving this benefit because it was prohibited by NRS 176.055(2)(b). The State acknowledges that the guilty plea agreement was predicated upon an incorrect interpretation of the law and is necessarily invalid and unenforceable.

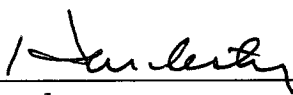
“Generally, we will not review a plea-validity challenge that is raised for the first time on appeal. There are exceptions to this rule in cases where: (1) the error clearly appears from the record; or (2) the challenge rests on legal rather than factual allegations.” O’Guinn v. State, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002) (footnotes omitted); see also Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). Here, given that the State was a party to the plea bargain and has

conceded that the bargain was predicated upon a misinterpretation of the law, we conclude that Nelson did not enter his guilty plea knowingly and intelligently. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for further proceedings.

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

  
\_\_\_\_\_, J.  
Pickering

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

cc: Hon. Michael Montero, District Judge  
Walter B. Fey  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk