

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN WAYNE WOOLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59531

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Allen Woolard raises multiple arguments on appeal.

First, Woolard argues that his guilty plea agreement is unenforceable as a contract of adhesion because the State has superior bargaining power and rarely allows for negotiation of its terms, leaving him in a "take it or leave it" situation. We disagree. A defendant is free to proceed to trial or choose to waive his rights in exchange for a lower sentence. U.S. v. Hare, 269 F.3d 859, 861 (7th Cir. 2001). Here, Woolard negotiated a favorable resolution of the charges against him in exchange for pleading guilty to the charges. This does not create a contract of adhesion. Id. at 862; United States v. Redmond, 22 F. App'x 345, 346 (4th Cir. 2002); United States v. Fernandez, 54 F. App'x 793 (5th Cir. 2002).

Second, Woolard argues that his guilty plea agreement is unenforceable because it contains a clause that binds him yet allows the State unfettered discretion to withdraw, rendering the agreement illusory and unconscionable. Because Woolard did not object below to the enforceability of the guilty plea agreement on these grounds, we grant

relief only if there is plain error affecting his substantial rights. Puckett v. United States, 556 U.S. 129, 143 (2009) (applying plain error review in the context of guilty plea agreements). The clause at issue does not allow the State to unilaterally withdraw from the agreement; instead, it reserves to the State a conditional right to argue: if an independent magistrate finds probable cause for new criminal charges against Woolard, then the State may argue for any legal sentence for the crime to which he pleaded guilty, including as a habitual criminal. We have deemed these clauses permissible so long as the “reservation or condition [is] clearly specified in the agreement along with the specific reservations of right in the State if other such offenses come to light.” Sparks v. State, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (quoting Citti v. State, 107 Nev. 89, 92, 807 P.2d 724, 726 (1991)). We thereby conclude that the Woolard has failed to establish plain error on this ground.

Third, Woolard argues that the new-criminal-charges clause does not substantially comply with the statutory requirements for guilty plea agreements under NRS 174.063. Woolard concedes that the statute allows for additions to the standardized guilty plea agreement yet argues that the new-criminal-charges clause at issue here is different because the State is in sole control of whether a new criminal charge is filed. We disagree. Although the State determines whether to file a criminal charge, Woolard has control over whether he engages in any criminal conduct. See id. at 113, 110 P.3d at 489. Regardless, we have rejected the argument that provisions other than those included in the standardized guilty plea agreement are invalid solely on that basis, id. at 111, 110 P.3d at 488; instead, we have explained that unique terms in a guilty plea agreement will be enforced even if they are not in substantial compliance

with NRS 174.063, “provided that the totality of the circumstances indicates that the guilty plea was knowing, voluntary, and intelligent,” *id.* at 112, 110 P.3d at 489.

Fourth, Woolard argues that his sentence is illegal because no one certified that the abstracts of judgment used as evidence of his prior felonies were accurate copies or representations of the judgments of conviction. Because Woolard only objected below to the State’s use of judgments of commitment, we review this argument for plain error affecting his substantial rights. See NRS 178.602; Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000). An abstract of judgment itself is a “contemporaneous, statutorily sanctioned, officially prepared clerical record of the conviction and sentence,” and thereby it need not be separately established that it is an accurate representation of the judgment of conviction. Chuen Piu Kwong v. Holder, 671 F.3d 872, 880 (9th Cir. 2011) (emphasis omitted) (internal quotations omitted), petition for cert. filed, 81 U.S.L.W. 3085 (U.S. July 30, 2012) (No. 12-150). Because the abstracts of judgment in this case were sufficiently authenticated, we conclude that Woolard has failed to demonstrate plain error on this ground.


Fifth, Woolard argues that his sentence is illegal because the evidence provided at the sentencing hearing did not establish beyond a reasonable doubt that: (1) he had at least two prior felonies, (2) he had been represented by counsel during the prior felonies, and (3) the prior felonies were separate transactions. Here, at least two abstracts of judgment indicate that Woolard was convicted of separate and distinct felonies and that he was represented by counsel. We thereby conclude that Woolard has failed to demonstrate plain error on this ground.


Sixth, Woolard argues that the district court violated his right to due process by failing to conduct a hearing as required by statute and did not specify which prior felonies it relied upon in its adjudication. Under NRS 207.016(3), a defendant who denies having a previous felony conviction is entitled to a hearing. However, Woolard did not dispute that he had been convicted of prior felonies and, in fact, admitted that he had been convicted of at least seven; therefore, the district court did not err by adjudicating him without a hearing. Moreover, the district court was not required to specify which felonies it relied upon in its adjudication. See Campbell v. District Court, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998). Accordingly, we conclude that Woolard has failed to demonstrate that he is entitled to relief on this claim.

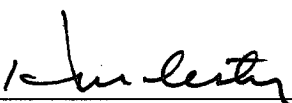
Seventh, Woolard argues that, under Apprendi v. New Jersey, 530 U.S. 466 (2000), he had a right to have a jury find that he had been convicted of at least two prior felonies. Because we have previously concluded that Apprendi's holding does not apply to habitual criminal adjudications, O'Neill v. State, 123 Nev. 9, 153 P.3d 38 (2007), we conclude that Woolard is not entitled to relief on this claim.

Having considered Woolard's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court Dept. 14
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk