IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADEN ROBERT PENNY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35799

FILED

AUG 16 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of stolen property. The district court sentenced appellant to serve 28 to 72 months in the Nevada State Prison. The court also ordered appellant to pay restitution in the amount of $5,000.00.

Appellant first contends that the district court abused its discretion by rejecting a proffered plea agreement between the State and appellant. In particular, appellant contends that this matter should be remanded because the district court failed to state its reasons for disapproving the plea agreement. We disagree.

"A criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court." North Carolina v. Alford, 400 U.S. 25, 38 n.11 (1970); see also Jefferson v. State, 108 Nev. 953, 954, 840 P.2d 1234, 1235 (1992). Nevada courts have discretion to refuse a guilty plea. NRS 174.035(1); Sturrock v. State, 95 Nev. 938, 940, 604 P.2d 341, 343 (1979). If there is a plea agreement between the parties, the court must conduct a hearing and consider seriously the proffered plea. Sparks v. State, 104 Nev. 316, 322, 759 P.2d 180, 184 (1988). If the district court disapproves the proposed agreement, it must

state the reasons for its disapproval on the record. See id. at 322-23, 759 P.2d at 184-85.

Here, the State informed the district court that it had entered negotiations for appellant to plead guilty to attempted grand larceny of a motor vehicle and that if appellant donated $5,000.00 to a local charity, the State would agree to recommend that the offense be treated as a gross misdemeanor rather than a felony. The district court's comments in rejecting the plea negotiations clearly indicate that the court could not accept the requirement of a charitable contribution. Thus, the record belies appellant's claim that the district court failed to state its reasons for disapproving the plea agreement. We therefore conclude that appellant's contention lacks merit.[1]

Appellant next contends that the district court violated NRS 6.045 by restricting the jury pool to those individuals who lived close to Tonopah, where the trial was being conducted. Appellant argues that NRS 6.045 requires that the jury be selected from "all eligible individuals residing in the county." We conclude that this contention also lacks merit.

NRS 6.045(2) provides that if the district court has selected a jury commissioner, the jury commissioner "shall from time to time estimate the number of trial jurors which will be required for attendance on the district court and shall select that number from the qualified electors of the county not exempt by law from jury duty." However, NRS 6.030 establishes grounds for excusing jurors both temporarily and permanently. Pursuant to NRS 6.030(1), the court "may at any

[1]Appellant does not contend that the district court could accept a plea agreement that requires the defendant to make a charitable contribution. We therefore need not reach this issue.

time temporarily excuse any juror on account of: (a) Sickness or physical disability. (b) Serious illness or death of a member of his immediate family. (c) Undue hardship or extreme inconvenience. (d) Public necessity."

On December 20, 1999, the district court entered an order temporarily excusing 23 jurors on the 1999 Annual List of Trial Jurors for Nye County, Nevada from jury duty in this case. The list of temporarily excused jurors indicates a specific reason for the temporary excuse with respect to only four of the jurors. Appellant represents that the district court previously issued a general order providing that jury pools for trials in district court would be drawn from those individuals residing within a certain proximity of the town in which the trial would be conducted. However, appellant has not provided this court with a copy of that general order. Assuming that the district court has entered such an order and that the court's practice is to temporarily excuse jurors living without a prescribed boundary, it appears that such a practice could be consistent with NRS 6.030 as such jurors could be temporarily excused on account of "[u]ndue hardship or extreme inconvenience."[2] See NRS 6.030(1)(c); see also State v. Cohn, 9 Nev. 179 (1874). While it might be better to require an affidavit or particularized finding of undue hardship or extreme inconvenience as to each exempt juror, considerations of judicial efficiency and economy militate against such a requirement in this case.

[2]Because appellant has failed to provide this court with documentation showing the geographical boundaries that the district court has used to temporarily excuse jurors, we must assume that the district court has selected a geographical boundary that would be indicative of undue hardship or extreme inconvenience were the exempt person required to travel to court.

Moreover, appellant has not demonstrated that the district court's practice deprived him of the right to a trial before a jury selected from a representative cross-section of the community. See Holland v. Illinois, 493 U.S. 474 (1990); Taylor v. Louisiana, 419 U.S. 522 (1975). In particular, appellant has not even alleged that the district court's practice excludes a "distinctive" group in the community. See Duren v. Missouri, 439 U.S. 357, 364 (1979) (setting forth requirements for defendant to demonstrate prima facie violation of fair-cross-section requirement). We therefore conclude that appellant has not demonstrated that the district court's practice rises to the level of a constitutional violation.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Nye County Public Defender
Nye County Clerk