

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KEVIN POHLABEL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35911

**FILED**

JAN 17 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY J. Deval  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, AND

REMANDING IN PART TO CORRECT JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of possession of a controlled substance. The district court sentenced appellant to two consecutive prison terms of 12 to 48 months. The district court suspended the prison sentence and placed appellant on probation for a period of 4 years.

Appellant first argues that the district court erred in denying his request to examine the State's cooperating individual ("CI") file to look for possible impeachment evidence. We disagree.

We note that

[although the State may not withhold evidence favorable to the accused and material to either guilt or sentence, the State is under no obligation to accommodate a defendant's desire to flail about in a fishing expedition to try to find a basis for discrediting a victim. See *State v. Blackwell*, 845 P.2d 1017, 1021 (Wash. 1993) ("Defense counsel's broad, unsupported claim that the police officers' personnel files may lead to material information does not justify automatic disclosure of the documents."). As the Washington Supreme Court observed: "A defendant must advance some factual predicate which makes it reasonably likely the requested file will bear information material to his or her defense. A bare assertion that a document 'might' bear such fruit is insufficient." *Id.* at 1022; see also *People v. Gissendanner*, 399 N.E.2d 924, 928 (N.Y. 1979) ("What [the decisions] do call for is the putting forth in good faith of some factual predicate which would make it reasonably likely that the file will bear such fruit and that

the quest for its contents is not merely a desperate grabbing at a straw.").

Sonner v. State, 112 Nev. 1328, 1340-41, 930 P.2d 707, 715 (1996).

Appellant requested to review the CI file in search of "impeachment information." The district court conducted an in camera review of the file and apparently found the file contained no information that might be material to appellant's defense. The record on appeal contains no written findings from or transcript of the district court's in camera review, and appellant provides this court with nothing more than bare allegations that the district court erred. We therefore conclude that the district court did not err in denying appellant's request for the CI file. See Riggins v. State, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) ("missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary"), rev'd on other grounds, 504 U.S. 127 (1992).

Appellant next argues that the charging document lacked specificity as to the type of controlled substance appellant possessed and the place of the offense. Appellant's assignment of error is repelled by the record.

"The indictment or the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1). Appellant was charged with two counts of "knowingly, unlawfully and/or intentionally" possessing controlled substances in violation of NRS 453.336. The information also listed appellant's name, the street address where the offenses occurred, and the two types of controlled substances, cocaine and methamphetamine. Thus, we conclude the information was sufficient to give

notice to appellant of the essential facts constituting the offenses with which he was charged.

Having considered appellant's contentions and concluded they are without merit, we affirm the judgment of the district court. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.

It is so ORDERED.

Young J.  
Young

Rose J.  
Rose

Becker J.  
Becker

cc: Hon. J. Michael Memeo, District Judge  
Attorney General  
Elko County District Attorney  
Matthew J. Stermitz  
Elko County Clerk