

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BENJAMIN MORALES-CARDENAS
A/K/A BENJAMIN CARDENAS
MORALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66183

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of felony driving and/or being in actual physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant claims that his prison sentence of 24 to 60 months constitutes cruel and unusual punishment because his crime did not injure anyone and it did not place the safety of the community in jeopardy. However, appellant entered into a written plea agreement that contained the following waiver of rights:

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:


...


6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon

reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4).

The Nevada Supreme Court has held that “[a] knowing and voluntary waiver of the right to appeal made pursuant to a plea bargain is valid and enforceable.” *Cruzado v. State*, 110 Nev. 745, 747, 879 P.2d 1195, 1195 (1994), *overruled on other grounds by Lee v. State*, 115 Nev. 207, 209-210, 985 P.2d 164, 166 (1999). Because the language of the plea agreement clearly demonstrates that appellant unconditionally waived his right to a direct appeal of the conviction, we conclude that appellant’s claim is waived, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk