

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEX STEWART,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36217

FILED

OCT 02 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with the use of a deadly weapon. The district court sentenced appellant to serve 24 to 96 months in the Nevada State Prison and to pay restitution in the amount of \$2,905.83.

Appellant contends that his guilty plea was not knowingly and voluntarily entered because he believed that counsel would argue for probation at sentencing and had he known that counsel would not argue for probation, he would not have entered a guilty plea. As appellant recognizes, this court does not "permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction." *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Such a challenge must be raised in the district court in the first instance by bringing a motion to withdraw the guilty plea or by commencing a post-conviction

proceeding under NRS chapter 34. See id. We decline appellant's invitation to overrule Bryant.¹

Having concluded that appellant's contention is not appropriate for review on direct appeal, we

ORDER this appeal dismissed.

Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

¹To the extent that appellant's contention could also be interpreted as a claim of ineffective assistance of counsel, we note that such claims "may not be raised on direct appeal, unless there has already been an evidentiary hearing." Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995). There has been no evidentiary hearing in this case, so any claim of ineffective assistance of counsel is more appropriately raised in a post-conviction proceeding.