

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO DEMAR WOODS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68027

**FILED**

SEP 21 2016

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

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of battery by a prisoner. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Antonio Woods claims the district court erred by denying his presentence motion to withdraw his guilty plea because defense counsel was ineffective for advising him to enter a plea to a crime that the State could not prove and the district court coerced his plea in violation of *Cripps v. State*, 122 Nev. 764, 137 P.3d 1187 (2006). We conclude the district court violated the bright-line rule adopted in *Cripps* and therefore the judgment of conviction must be reversed.

In *Cripps*, the Nevada Supreme Court adopted a bright-line rule prohibiting “any judicial participation in the formulation or discussions of a potential plea agreement with one narrow, limited exception: the judge may indicate on the record whether the judge is inclined to follow a particular sentencing recommendation of the parties.” *Id.* at 770-71, 137 P.3d at 1191. The Nevada Supreme Court further determined “that judicial participation in plea negotiations is subject to harmless error analysis” and “the focus of the harmless error inquiry is

whether the district court's erroneous participation may reasonably be viewed as having been a material factor affecting the defendant's decision to plead guilty." *Id.* at 771, 137 P.3d at 1192 (internal quotation marks, ellipses, and brackets omitted).

Here, on the first day of trial, the district court directly addressed Woods as follows:

THE COURT: Your attorney has talked to the State about a negotiation and you do not want to accept the negotiation; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

[DEFENSE COUNSEL]: I believe as a matter of the record, Your Honor, we need to place what that negotiation was before the Court.

THE COURT: Put it on the record.

The district court resumed its inquiry after the prosecutor placed the negotiations on the record.

THE COURT: Okay. That was all explained to you by your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: And you reject the negotiation?

THE DEFENDANT: No, but this -- I don't understand. You said so if we argue for a 1 to 3 and she's arguing for a 5 to 15, it's a -- it's at your discretion, right? Is that what the --

THE COURT: Yeah.

[THE PROSECUTOR]: Yeah, that would be up to the judge.

THE COURT: And you won't be remanded today.

[Colloquy between Counsel and the Defendant]

THE DEFENDANT: I'm willing to take the -- the offer.

THE COURT: All right.

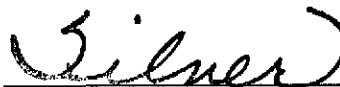
The district court's comment that Woods would not "be remanded today" violated *Cripps*' bright-line rule because it constituted judicial participation in the formulation or discussions of a potential plea agreement and it appears to have had a coercive effect. As nothing in the record suggests this comment was harmless, we conclude Woods must be given the opportunity to withdraw his guilty plea. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to a different district court judge for proceedings consistent with this order.<sup>1</sup>



Tao

J.



Silver

J.

cc: Eighth Judicial District Court, Chief Judge  
Hon. Douglas Smith, District Judge  
Law Office of David R. Houston  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>In light of our decision, we need not address Woods' assertion the district court abused its discretion by denying his motion to withdraw his plea based on ineffective assistance of counsel. We note, however, the record demonstrates the district court did not apply the correct standard when ruling on the motion. See *Stevenson v. State*, 131 Nev. \_\_\_, \_\_\_, 354 P.3d 1277, 1281 (2015). In light of this decision, we also decline to address Woods' claim that his sentence constitutes cruel and unusual punishment.