


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY ANTHONY BUTLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69821

FILED

NOV 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Rickey Anthony Butler appeals from a judgment of conviction entered pursuant to a guilty plea of attempted felon in possession of a firearm. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

First, relying on the current version of NRS 207.016(2), Butler claims the district court erred in adjudicating him a habitual criminal because the State failed to provide timely notice of its intent to seek habitual criminal adjudication and the district court did not make an express finding of good cause to excuse the untimely notice.

“[U]nless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of a crime.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). The current version of NRS 207.016(2) does not indicate it is to be applied retroactively and the version that was in effect when Butler committed his crime provided, “[a] count pursuant to NRS 207.010, 207.012 or 207.014 may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed, or the hearing required by

subsection 3 held, until 15 days after the separate filing.” 2007 Nev. Stat., ch. 327, § 56, at 1441. Because the State filed its habitual criminal notice more than 15 days before Butler’s sentence was imposed, we conclude Butler had timely notice and the district court did not err in this regard.

Second, Butler claims the district court erred in adjudicating him a habitual criminal because it failed to advise him of the risk of habitual criminal adjudication during its plea canvass. “When the district court accepts a defendant’s guilty plea, it must act with utmost solicitude to ensure that a defendant has a full understanding of both the nature of the charges and the *direct consequences* arising from a plea of guilty.” *Little v. Warden*, 117 Nev. 845, 849, 34 P.3d 540, 542-43 (2001) (emphasis in original, internal quotation marks omitted). “Direct consequences have an automatic and immediate effect on the nature or length of a defendant’s punishment,” *Palmer v. State*, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002); whereas, “[c]ollateral consequences . . . do not affect the length or nature of the punishment and are generally dependent on either the court’s discretion, the defendant’s future conduct, or the discretion of a government agency,” *Nollette v. State*, 118 Nev. 341, 344, 46 P.3d 87, 89 (2002).

Here, the risk of habitual criminal adjudication was a collateral consequence because it did not automatically and immediately effect Butler’s punishment and it was dependent on Butler’s future conduct. However, even if the risk of habitual criminal adjudication could be construed as a direct consequence of Butler’s guilty plea, the record demonstrates he was fully informed of this consequence in the written plea agreement and he admitted to reading and understanding the plea agreement during the district court’s plea canvass. Accordingly, we

conclude the district court properly accepted Butler's guilty plea and Butler has failed to show the district court erred in this regard. *See Lee v. State*, 115 Nev. 207, 210, 985 P.2d 164, 166 (1999) (Where the record shows the defendant was otherwise fully informed of the consequences of his plea, he "will not be heard to complain that this information did not come directly from the district court.").

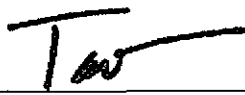
Third, Butler claims the district court erred in adjudicating him a habitual criminal because the failure-to-appear (FTA) clause constituted an unconscionable provision and an impermissible penalty under Nevada law. However, the Nevada Supreme Court has previously ruled FTA clauses are not unconscionable because the defendant controls whether the State will be allowed to argue for a particular sentence, they are reasonable because they address some of the State's concerns in deciding whether to extend a plea bargain in the first instance, and they are lawful and enforceable. *Sparks v. State*, 121 Nev. 107, 113, 110 P.3d 486, 489 (2005). Accordingly, Butler has not shown the district court erred in this regard.


Fourth, citing to *Gamble v. State*, 95 Nev. 904, 604 P.2d 335 (1979), Butler claims the district court erred in adjudicating him a habitual criminal without conducting an evidentiary hearing to determine whether he breached the plea agreement and, if so, whether his breach was sufficient to release the State from its conditional promise. However, the Nevada Supreme Court has considered a similar claim and determined *Gamble* is inapplicable because it does not "involve a plea agreement containing [a] FTA clause or other similar clause conditionally releasing the State from a particular promise." *Sparks*, 121 Nev. at 111, 110 P.3d at 488. The record plainly demonstrates Butler breached the express

conditions of the FTA clause by failing to interview with the Division of Parole and Probation and by failing to appear at several hearings in his case. Accordingly, Butler has not shown the district court erred in adjudicating him a habitual criminal without conducting an evidentiary hearing.

Having concluded Butler is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk