

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRENT Y. INGRAM,

No. 36482

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 17 2000

JANE W. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to vacate judgment of conviction.

On November 15, 1995, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of second degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely direct appeal for lack of jurisdiction. *Ingram v. State*, Docket No. 29722 (Order Dismissing Appeal, February 24, 1997).

On April 22, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On June 12, 1997, the district court denied appellant's petition. This court dismissed appellant's appeal. *Ingram v. State*, Docket No. 30639 (Order Dismissing Appeal, July 14, 1999).

¹North Carolina v. Alford, 400 U.S. 25 (1970).

On June 14, 2000, appellant filed a proper person motion to vacate judgment of conviction in the district court. The State opposed the motion. On July 10, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant argued that the district court lacked subject matter jurisdiction because of the alleged improper filing and amendment of the indictment. Appellant argued that his judgment of conviction should be vacated and that he should be immediately released. Based upon our review of the record on appeal and for the reasons discussed below, we conclude that the district court did not err in denying appellant's motion.

First, appellant argued that the district court lacked subject matter jurisdiction because the indictment was invalid due to the fact that not all of the grand jurors were present at the time the grand jury foreman presented the true bill in open court. We conclude that appellant is not entitled to relief on this claim. Appellant has not demonstrated that any alleged errors relating to the grand jury proceedings divested the district court of subject matter jurisdiction. See NRS 171.010 ("Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States."); NRS 171.100 ("An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed."). Further, appellant waived his challenge to the grand jury proceedings by entry of his guilty plea. See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987);

Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). Finally, appellant's claim of error lacks merit. NRS 172.255 does not require the presence of all of the grand jurors to return the true bill in open court. Rather, NRS 172.255, addressing grand jury returns, provides in pertinent part:

1. A presentment or indictment may be found only upon the concurrence of 12 or more jurors.
2. The jurors shall vote separately on each person and each count included in a presentment or indictment.
3. The presentment or indictment must be returned by the grand jury to a judge in open court or, in the absence of the judge, to the clerk of the court in open court, who shall determine that 12 or more jurors concurred in finding a presentment or indictment.

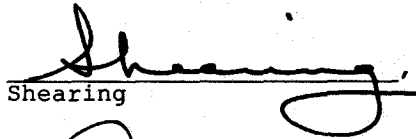
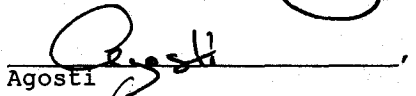
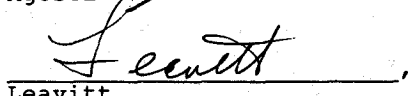
In the instant case, the grand jury foreperson presented the true bill in open court and informed the court that twelve or more grand jurors concurred in the true bill returned against appellant. Therefore, the district court did not err in rejecting this challenge to the subject matter jurisdiction of the district court.

Second, appellant argued that the district court lacked subject matter jurisdiction because the State amended the indictment pursuant to the plea negotiations without first presenting the amended indictment to the grand jury. We conclude that appellant is not entitled to relief on this claim. Appellant failed to demonstrate that any alleged error relating to the amended indictment deprived the district court of subject matter jurisdiction. See NRS 171.010. Further, appellant waived any challenge to the amendment of his indictment by entry of his plea. See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). Finally, we note that the indictment was amended pursuant to the plea negotiations. The original indictment charged appellant with two

counts: (1) murder with the use of a deadly weapon with the intent to promote, further or assist a criminal gang, and (2) dissuading a witness with the intent to promote, further or assist a criminal gang. Pursuant to the plea negotiations, an amended indictment was filed in the district court charging appellant with one count, second degree murder. Therefore, we conclude that the district court did not err in rejecting this challenge to the subject matter jurisdiction of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.

It is so ORDERED.²


Shearing J.

Agosti J.

Leavitt J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Trent Y. Ingram
Clark County Clerk

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.