

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL TERRY, A/K/A SAMUEL
CHRISTIAN TERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70872

FILED

DEC 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

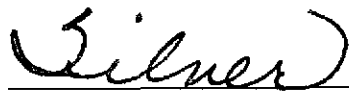
Samuel Terry appeals from a judgment of conviction entered pursuant to a guilty plea of grand larceny of a motor vehicle and possession of a firearm by a felon. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

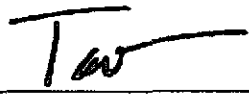
Terry appears to challenge the validity of his guilty plea, arguing he entered his guilty plea not knowing the State was going to seek adjudication under the large habitual criminal statute. "Generally, we will not review a plea-validity challenge that is raised for the first time on appeal. There are exceptions to this rule in cases where: (1) the error clearly appears from the record; or (2) the challenge rests on legal rather than factual allegations." *O'Guinn v. State*, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002) (footnotes omitted). As Terry has not alleged that either of these exceptions apply, we decline to consider his claim on direct appeal.

To the extent Terry claims the district court erred by sentencing him under the large habitual criminal statute, we conclude he has not demonstrated error. The record reveals the parties' written plea agreement contained a clause, which would allow the State to argue for

large habitual criminal adjudication under certain circumstances. The district court explained this clause to Terry during its plea canvass, plainly stating the State would be allowed to argue for sentencing under the large habitual criminal statute if Terry picked up any new charges. Terry entered his guilty plea, he was released on bail, and he was indicted for a new crime he committed while on bail.¹ Based on this record, we conclude Terry is not entitled to relief. *See generally Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (“This court will enforce [the] unique terms of the parties’ plea agreement.”).

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Law Office of John G. George
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The record on appeal did not include a sentencing transcript. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”).