

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY LEE STUTTS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74827-COA

FILED

DEC 10 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jeremy Lee Stutts appeals from a judgment of conviction, pursuant to a guilty plea, of level-two trafficking in a controlled substance. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

After being arrested for a parole violation, Stutts was detained in the Lyon County Jail for ten days.<sup>1</sup> During this time, law enforcement monitored Stutts' phone calls and discovered that he was making calls to Samantha Gifford discussing his plan to sell drugs once he was released. Based on this information and other observations during a months-long investigation, law enforcement obtained a search warrant for Stutts' and Gifford's persons, a vehicle that law enforcement had equipped with a GPS tracker based on a prior warrant, another vehicle, and the residence where Stutts was living.

Subsequently, law enforcement conducted a traffic stop on Stutts and Gifford and executed the warrant. Based on information that Gifford had hidden drugs in her vagina in the past, law enforcement transported Gifford and Stutts to the Carson Tahoe Hospital for cavity searches. During the cavity search of Gifford, two bags containing a total of 32.1 grams of methamphetamine were removed from her vagina.

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

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At his arraignment, Stutts pleaded guilty to level-two trafficking in a controlled substance under NRS 453.3385(1)(b). The district court sentenced Stutts to serve 36 to 120 months in prison.

On appeal, Stutts argues that (1) law enforcement conducted an unlawful search because the warrant did not specifically provide for a cavity search of Stutts or Gifford, (2) Stutts' guilty plea was invalid because he was misled as to the lawfulness of the cavity search when entering the plea, and (3) his sentence amounts to cruel and unusual punishment.

First, Stutts argues that the cavity search was unlawful because the warrant failed to describe with particularity that law enforcement would conduct a cavity search.

The entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975); *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973). A defendant may enter a conditional plea preserving the right to challenge "the adverse determination of any specified pretrial motion." NRS 174.035(3). But Stutts did not enter a conditional plea, nor did he file any pretrial motions challenging the lawfulness of the search. Because Stutts failed to preserve this issue, we conclude that he waived his right to raise this issue on direct appeal.

Second, Stutts argues that his guilty plea was invalid because he was misled as to the lawfulness of the cavity search when he negotiated and entered his guilty plea.

"[A] post-conviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged." *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014);

see also NRS 34.724. But a defendant can challenge the procedures leading to the entry of a plea on direct appeal, “if that challenge does not address the voluntariness of the plea.” *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

Here, Stutts merely repeats his earlier argument contesting the cavity search and asserts that he was misled about its lawfulness when he entered his plea. Thus, Stutts effectively argues only after sentencing that his guilty plea was either invalid or involuntarily entered. Such arguments are not appropriate on direct appeal and must be brought through a writ of habeas corpus in the district court. Therefore, we decline to consider Stutts’ challenge to his guilty plea.

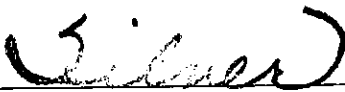
Finally, Stutts argues that the sentence imposed by the district court amounts to cruel and unusual punishment because it exceeded the 72-month cap recommended by the State pursuant to the plea negotiations.

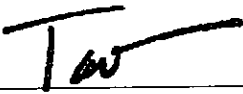
A district court has wide discretion in imposing sentences in criminal cases. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). “[R]egardless of its severity, a sentence that is within the statutory limits is not considered to violate the Eighth Amendment’s proscription against cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Pitmon v. State*, 131 Nev. 123, 126, 352 P.3d 655, 657 (Ct. App. 2015) (internal quotation marks omitted). NRS 453.3385(1)(b), the statute under which Stutts was sentenced, calls for “imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not more than \$100,000.” Here, Stutts’ sentence of 36 to 120 months in prison

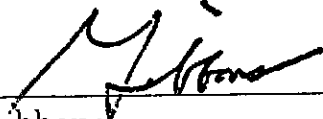
falls within this statutory limit, and Stutts does not challenge the constitutionality of the statute under which he was charged. Accordingly, the district court did not abuse its discretion because the sentence imposed did not amount to cruel and unusual punishment.

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. John Schlegelmilch, District Judge  
Wayne A. Pederson, P.C.  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk