

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRETT J. KELLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36909

FILED

FEB 27 2003

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
By *J. Richards*
CHIEF CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of second-degree kidnapping (count I), sexual assault of a minor under 16 years of age (count II), and lewdness with a child under 14 years of age (count III). The district court sentenced appellant Garrett J. Kelly to serve concurrent prison terms of 24 to 84 months for count I, 5 to 20 years for count II, and life with parole eligibility in 10 years for count III.

Kelly contends that he should be allowed to withdraw his guilty plea because it was not knowing and voluntary. In particular, Kelly contends that his guilty plea was constitutionally infirm because: (1) the district court failed to adequately canvass Kelly on the constitutional rights he was waiving by pleading guilty and the direct consequences of the guilty plea; (2) Kelly was not competent to enter a guilty plea; and (3) his trial counsel was ineffective in advising him to plead guilty without

ensuring he was competent and without explaining the consequences of the guilty plea.

We decline to consider Kelly's contentions. In Bryant v. State, this court recognized that it does not allow "a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction."¹ Generally, such challenges must be raised "in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding."² Our review of the record in this case fails to reveal any clear error that would allow an exception to the general rule set forth in Bryant and, therefore, Kelly must raise his claims regarding the validity of the guilty plea in the district court in the first instance.³

Likewise, Kelly's claims that his trial counsel was ineffective are also more appropriately raised in the district court in the first instance by way of a petition for post-conviction relief.⁴ This court has consistently refused to consider claims of ineffective assistance of counsel on direct appeal.⁵ We decline to do so now.

¹102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

²Id.

³See Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).


⁴Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).

⁵Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995).

Therefore, having considered Kelly's claims and concluded that they are inappropriate for review on direct appeal, we ORDER this appeal DISMISSED.


Shering, J.


Leavitt, J.


Becker, J.

cc: Hon. Donald M. Mosley, District Judge
Kurth & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk