IN THE SUPREME COURT OF THE STATE OF NEVADA

LORIE ANN RAICHLE A/K/A LORIE ANN MEISNER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36915

FILED

AUG 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of child abuse and neglect causing substantial mental injury.[1] The district court sentenced appellant to serve 70 to 175 months in prison.

Appellant first contends that the district court erred in denying her presentence motion to withdraw her nolo contendere plea. We conclude that this contention lacks merit because appellant voluntarily withdrew her presentence motion to withdraw her plea.[2]

The record reveals that, prior to sentencing, appellant made an oral motion to withdraw her plea contending that she entered the plea agreement under the belief that she

[1]Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

[2]After sentencing, appellant filed a written motion to withdraw her nolo contendere plea, which was denied by the district court. We have not considered the district court's order denying appellant's post-sentence motion to withdraw her Alford plea because we have no jurisdiction to do so. Indeed, appellant's notice of appeal indicates that she is challenging the judgment of conviction, not the order denying her post-sentence motion to withdraw her Alford plea.

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would be sentenced to probation. The district court informed appellant that it would grant her motion: "It is not the Court's inclination to grant you probation. If you entered your plea under a false understanding of the situation, I am going to allow you to withdraw your plea." However, immediately thereafter, the State urged the court to reconsider its ruling in light of the fact that a trial would cause further emotional harm to appellant's children.[3]

After argument on the issue, the district court continued the hearing and ordered appellant to file a presentence motion to withdraw. Appellant stated "I don't' want to. I will take the plea. I don't want to. I will just take the plea." The district court then inquired: "You do not wish to withdraw your plea of guilt, ma'am?" Appellant answered "Yes." Because the record reveals that appellant voluntarily withdrew her presentence motion to withdraw her plea, we conclude that appellant's contention lacks merit.

Appellant next contends that this court should enforce the alleged plea agreement reached between the district attorney and appellant's counsel that appellant would be sentenced to probation. We conclude that this contention lacks merit because there is no evidence of an agreement concerning probation.[4]

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[3]The State alleged that appellant's three children had each attempted suicide since their mother's arrest, and that the children had suffered severe emotional trauma from years of sexual abuse. Although appellant did not sexually abuse her children, the State charged appellant with failing to protect her children by taking money from their abuser in exchange for allowing the abuser to sexually molest and take pornographic photographs of her three young children.

[4]Further, even is such an agreement existed, the district court was not bound by it, because sentencing is a discretionary function of the district court. See Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

The record reveals that no promises were made with respect to sentencing. The plea agreement provided that appellant had not been promised any particular sentence, and that the district court was not obligated to accept the recommendation of a particular party. Likewise, appellant was informed at her plea canvas that probation was not guaranteed. In fact, the district court clarified this issue, asking counsel for appellant: "you wanted to make sure that the record was clear [appellant] was pleading to a probational offense. I am sure you have advised her that sentencing is up to the Court, that no one can promise your client any leniency, probation or special treatment." Counsel for appellant answered: "That's correct." Accordingly, because there is no evidence in the record that the State promised probation, we reject appellant's contention.

Finally, appellant contends that the district court abused its discretion at sentencing because the sentencing proceeding was "unfair." Because appellant fails to make any cogent argument or cite any legal authority with respect to the purported "unfairness," we need not consider it.[5]

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

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[5]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Barry Levinson
Clark County Clerk