

IN THE SUPREME COURT OF THE STATE OF NEVADA

KYRO LEWIS WILLIAMS,

No. 37000

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 14 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of selling a substance by representing it to be a controlled substance in violation of NRS 453.323. The district court sentenced appellant to serve 1 to 3 years in prison, suspended execution of the sentence, and placed appellant on probation for 3 years. Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant contends that the district court erred in denying his motion to strike or dismiss the felony charge for violating NRS 453.323 because the legislature repealed that provision by implication when it enacted another statute, NRS 453.332, which proscribes the same conduct as a misdemeanor offense. As part of the plea negotiations, appellant reserved his right to appellate review of the district court's order denying that motion.¹

We recently considered this issue in Washington v. State.² In that case we held that NRS 453.332 and NRS 453.323 proscribe the same conduct and that the felony statute, NRS 453.323, had been repealed by implication when the legislature subsequently enacted the misdemeanor statute, NRS 453.332.³ Based on Washington, we conclude that

¹See NRS 174.035(3).

²117 Nev. ___, 30 P.3d 1134 (Adv. Op. No. 62, September 17, 2001).

³Id. at ___, __ P.3d at ___ (Adv. Op. No. 62, at 1).

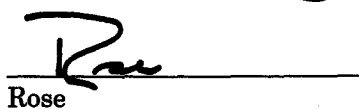
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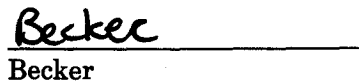
appellant's contention has merit. The district court erred in denying appellant's motion to strike or dismiss the felony charge.

Pursuant to NRS 174.035(3), where a defendant who enters a conditional guilty plea and reserves his right to appellate review of the adverse determination of a pretrial motion prevails on appeal, he "must be allowed to withdraw the plea." Accordingly, we

ORDER this matter REMANDED WITH INSTRUCTIONS to the district court to allow appellant to withdraw his guilty plea.


Shearing J.


Rose J.


Becker J.

cc: Hon. Jerome Polaha, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk