IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ANTHONY RAICHLE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37113

FILED

MAR 05 2001

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,[1] of two counts of sexual assault of a child under the age of 16 years and one count of child abuse and neglect with substantial mental injury. The district court sentenced appellant to serve two terms of 60-240 months in prison for the sexual assault counts and a term of 96-240 months in prison for the child abuse and neglect count. The district court further ordered that all of the sentences be served concurrently.

Appellant contends that his guilty plea was not entered knowingly, intelligently and voluntarily. In particular, appellant complains that he did not understand the nature of the charges to which he pleaded guilty.

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[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).

As appellant acknowledges, in Bryant v. State, this court stated that it will

> no longer permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea 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]

Appellant, however, argues that the error in this case is clear from the record, and therefore, this court should consider the validity of the plea agreement on direct appeal as it did in Lyons v. State[3] and Smith v. State.[4] We conclude that the circumstances of this case do not warrant an exception to the general rule stated in Bryant.

In Lyons, the defendant argued that his guilty plea was invalid because the statute defining the offense was unconstitutionally vague.[5] This court treated the case as a limited exception to the ruling in Bryant because the issue raised on appeal was not the type of claim that necessitated a factual determination that would be better made by the district court in the first instance.[6] Here, the issue raised by appellant is one of the "usual challenges to the validity

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[2]102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[3]105 Nev. 317, 775 P.2d 219 (1989).

[4]110 Nev. 1009, 879 P.2d 60 (1994).

[5]105 Nev. at 320, 775 P.2d at 221.

[6]Id. at 319, 775 P.2d at 220.

of guilty pleas"—an allegation of infirmity in the plea canvass.[7] We therefore conclude that the issue raised in this appeal is not similar to that raised in Lyons.

In Smith, the transcript of the plea canvass clearly revealed that the defendant's plea was the result of coercion and coaching by the district court and defense counsel.[8] This court concluded that because the error clearly appeared from the record, it would be a waste of judicial resources to require the defendant to raise the issue in the district court in the first instance.[9] Here, the issue is a more traditional challenge to the validity of the guilty plea and the alleged error is not clear from the record. We therefore conclude that the exception to Bryant recognized in Smith is not applicable to this case.

Furthermore, to the extent that appellant also claims that trial counsel provided ineffective assistance, we conclude that those claims are not appropriate for review on direct appeal. As we explained in Feazell v. State, claims of ineffective assistance of counsel may not be raised on direct appeal, "unless there has already been an evidentiary hearing."[10] There has not been an evidentiary hearing in this case. Accordingly, appellant must raise his ineffective

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[7]Id.

[8]See 110 Nev. at 1010-14, 879 P.2d at 61-63.

[9]Id. at 1010 n.1, 879 P.2d at 61 n.1.

[10]111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

assistance claims in the district court in the first instance by commencing a post-conviction proceeding under NRS chapter 34.

Having considered appellant's contentions and concluded that they are not appropriate for review on direct appeal from a judgment of conviction, we

ORDER this appeal DISMISSED.

Young, J.

Rose, J.

Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Osvaldo E. Fumo
Clark County Clerk