IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM HAWTHORNE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37294

FILED

NOV 15 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 guilty plea, of two counts of lewdness with a child under the age of fourteen. The district court sentenced appellant Adam Hawthorne to two concurrent terms of imprisonment for life with parole eligibility after ten years and lifetime supervision to commence upon release from prison. The court further ordered appellant to submit to genetic marker testing, register as a sex offender and pay a $25 administrative assessment, a $250 DNA analysis fee and a $925 psychosexual evaluation fee.

Appellant first contends that the record is insufficient to demonstrate a valid guilty plea because: (1) during proceedings prior to entry of his guilty plea, appellant changed his mind about entering into a plea agreement; (2) at one such proceeding, he glared at the prosecutor and, when asked by the district court why he did so, stated that his life was on the line; (3) at another such proceeding, he asked the district court whether he could have substitute counsel; (4) on the date he entered his guilty plea, but prior to indicating he wanted to plead guilty, the district court asked whether he understood the proceedings and wanted to go to trial, and appellant answered, "No. Yes, yes."; (5) the district court's oral canvass was inadequate; and (6) appellant wrote the wrong date on the plea agreement as the date he signed the agreement. We conclude that appellant's challenges to the validity of his guilty plea are not appropriate for resolution on direct appeal.

This court generally does not permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of

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conviction.[1] Appellant failed to raise his contentions in the district court. Moreover, our review of the record in this case fails to reveal any clear error that would allow an exception to the general rule.[2]

Appellant next contends that his conviction should be invalidated because count II of the information upon which he pleaded guilty incorrectly stated the name of the victim. He notes that he was originally charged with one count of sexually assaulting "L.H." and two counts of lewdness with "L.R.," a minor under the age of fourteen. During negotiations, he agreed to plead guilty to the two lewdness counts. But at the time of the plea canvass, it was discovered that the information attached as an exhibit to the written guilty plea agreement alleged one count of lewdness with L.H. and one count of lewdness with L.R., and alleged both victims were under the age of fourteen. When defense counsel noted the error, the prosecutor moved without objection to amend the information by interlineation to reflect that both counts of lewdness involved L.R. The district court orally ordered the amendment. Appellant admitted to the two counts of lewdness against L.R., and the district court accepted his guilty plea. Although the judgment of conviction does not recite the names of the victims, appellant argues that because the information appended to the plea agreement was not physically altered to reflect the amendment, he may be prejudiced in the future because parole authorities and others will believe that he engaged in lewdness with two separate victims. Appellant also argues that he could not be convicted of the lewdness count involving L.R. because she was not under the age of fourteen. We conclude that appellant has failed to demonstrate any error.

To the extent that he challenges the propriety of the amendment of the information, this issue was waived when appellant continued with the entry of his guilty plea to the amended charge.[3] Moreover, this challenge lacks merit. A district court "may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial

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

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

[3]See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

rights of the defendant are not prejudiced."[4] Appellant does not argue that he was prejudiced by the amendment. Instead, he claims that he was prejudiced by the lack of an effective amendment to the information. In essence, he contends that an information must be physically altered to accomplish a valid amendment. However, appellant does not present any cogent argument or authority to show that an orally pronounced order of the district court, which, like the instant order, is reflected in the transcripts and court minutes, is not itself sufficient to amend an information for purposes of entry, acceptance and recording of a guilty plea and entry of a judgment of conviction. Therefore, we need not consider appellant's contention.[5]

Appellant also contends that he is entitled to some unspecified remedy because he entered the wrong date, November 11, 2000, when he signed the guilty plea agreement on November 9, 2000. We note that the record shows that appellant entered his guilty plea on November 9, 2000, and that his sentence was credited with time served. He does not challenge this calculation of this award of credit. Nonetheless, he argues that he may suffer future prejudice due to the risk that his release date will be miscalculated based on the incorrect date in his plea agreement. He therefore asks this court to "address" the error. Again, appellant fails to make any coherent argument or present any authority showing that he is entitled to any relief from this court. Accordingly, we decline to consider this claim of error.[6]

Finally, in his briefs prepared by counsel, appellant alleges that his proper person notice of appeal reflects his concern with issues involving ineffective assistance of counsel, coercion affecting the validity of the plea and newly discovered evidence. Appellant urges this court to review the record to determine whether these concerns merit relief. Appellate counsel's attempt to incorporate arguments made by appellant

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[4]NRS 173.095(1); DePasquale v. State, 106 Nev. 843, 847, 803 P.2d 218, 220-21 (1990).

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

[6]See id.

in his proper person notice of appeal is improper.[7] Moreover, appellant's claims that counsel was ineffective, like his claims attacking the validity of his guilty plea, are not appropriate issues for our review on direct appeal.[8] Appellant can raise these issues in a post-conviction proceeding in the district court.[9] His claim of newly discovered evidence is not supported by reference to record or by any authority or argument, and we will not consider it.[10]

Having reviewed the record, and for the reasons set forth above, we conclude that appellant cannot demonstrate error in this appeal. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Emmett W. Lally
Clark County Clerk

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[7]See NRAP 28(a)(4) (requiring that argument in briefs be supported by reasons and authorities relied on); NRAP 28(e) (stating that assertions in briefs shall be supported by reference to the record).

[8]See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

[9]See id. at 751-52, 877 P.2d at 1059.

[10]See Maresca, 103 Nev. at 673, 748 P.2d at 6.

[11]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.