

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM AGUILAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37375

FILED

JUN 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of first degree murder and one count of battery causing substantial bodily harm. The district court sentenced appellant to a prison term of 20 to 50 years for murder and to a concurrent prison term of 12 to 60 months for battery.

Prior to sentencing, appellant filed a motion to withdraw his guilty plea, in which he argued that the State had withheld evidence of threats made against appellant's family by the victims. The district court denied the motion.

Appellant now contends that his guilty plea is invalid because the canvass was inadequate. The State argues that this claim should not be entertained on appeal at this time because it has not been presented to the district court.¹ However, this court has recognized that the rule in Bryant cannot be applied without exception, and where the error clearly appears from the record, challenges to the validity of a guilty plea will be considered even if they have not first been raised in the district court.² We conclude that, under

¹See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

²Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994).

the unique circumstances of this appeal, it would be a waste of judicial resources to require appellant to first bring his claim in district court.

In determining the validity of a guilty plea, this court looks to the totality of the circumstances.³ In the instant case, the district court explained the consequences of appellant's plea, and the State described the evidence that would be presented if the case went to trial. The district court did not, however, explain the rights that appellant was waiving by pleading guilty or ask if appellant was entering his plea voluntarily. Although the plea agreement outlined the rights appellant was waiving, and stated that appellant was doing so voluntarily, the district court did not even inquire as to whether appellant had read or understood the agreement. Under the totality of the circumstances, including the gravity of the crimes to which appellant pleaded, and the fact that appellant had only an eighth-grade education, we conclude that the plea canvass was so inadequate that appellant's plea was invalid. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to allow appellant to withdraw his guilty plea.

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

³State v. Freese, 116 Nev. ___, 13 P.3d 442 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Special Public Defender
Clark County Clerk