IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BOYKIN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37680

FILED

JUL 30 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 one count of open and gross lewdness, a category D felony. The district court sentenced appellant to a prison term of 12 to 30 months, to be served consecutively to any sentence appellant was already serving.

The charges in this case arose when appellant, who was incarcerated at the Ely State Prison, was masturbating in front of the window of his cell door in view of a female correctional officer.

Appellant first contends that the district court erred by sentencing him for a felony. NRS 201.210 provides that an individual guilty of first offense open and gross lewdness shall be sentenced for a gross misdemeanor, but that the punishment for subsequent offenses is sentencing for a category D felony. Appellant argues that the State was required to prove that he had previously been convicted of open and gross lewdness, before he could be convicted of felony open and gross lewdness. In the plea agreement, however, appellant pleaded guilty to "OPEN AND GROSS LEWDNESS, a violation of NRS 201.210, a category 'D' felony."

This court has recently held that a defendant may "stipulate to or waive proof of [] prior convictions at

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sentencing."[1] By pleading guilty to the felony offense, appellant waived proof of his prior conviction. Appellant's contention is therefore without merit.

Appellant next contends that the criminal charge against him constitutes a violation of the Double Jeopardy Clauses of both the United States[2] and Nevada[3] constitutions. Specifically, appellant argues that he could not be criminally charged because he had already been subjected to punishment through the Code of Penal Discipline. This court, however, has long held that "[t]he trial and conviction of an inmate who has previously been disciplined by prison authorities for the same offense does not constitute double jeopardy."[4] Appellant's contention is therefore without merit.

Appellant finally contends that he was deprived of his right to due process because he was not informed, as part of the disciplinary process, that the matter might be referred to the Attorney General for possible criminal prosecution.

This court has stated that an appellant may not raise challenges to events that preceded a guilty plea.[5] "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to

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[1]Krauss v. State, 116 Nev. 307, 311, 998 P.2d 163, 165 (2000).

[2]U.S. Const. amend V.

[3]Nev. Const. art. 1, § 8.

[4]Shuman v. Sheriff, 90 Nev. 227, 228, 523 P.2d 841, 842 (1974).

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

the entry of the guilty plea."[6] We therefore conclude that appellant's claim was waived when he entered his plea.

Moreover, even if we were to consider this argument on the merits, it would fail. The record shows that prison officials did not violate prison regulations in initiating a referral to the Attorney General. Further, we note that appellant could not have been informed of the possibility of criminal charges and his right to remain silent at the disciplinary hearing, because he refused to attend the disciplinary hearing.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

cc: Hon. Norman C. Robison, Senior District Judge
Attorney General
White Pine County District Attorney
State Public Defender
White Pine County Clerk

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[6]Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).