

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GLENN BOBBY HENDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83584-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Glenn Bobby Henderson appeals from a judgment of conviction entered pursuant to a guilty plea of coercion sexually motivated and open or gross lewdness. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Henderson raises two claims on appeal: the district court abused its discretion at sentencing, and Henderson was not competent at the time of sentencing. In response, the State argues that Henderson waived his right to appeal from the sentencing proceedings in his guilty plea agreement. Henderson replies that he did not waive that right because the waiver in the guilty plea agreement is vague, the waiver does not substantially comply with NRS 174.063, and his claims could not be anticipated at the time of the waiver.

First, Henderson argues his plea agreement waived only claims challenging the “conviction” and, because it did not mention sentencing, it did not waive appeal claims regarding sentencing. The appeal waiver included in Henderson’s plea agreement states that he was “unconditionally waiving [his] right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other

grounds that challenge the legality of the proceedings as stated in NRS 177.015(4).” NRS 177.015(4) refers to appeals from “a final judgment,” and a final judgment in a criminal case is a judgment of conviction that comports with NRS 176.105. *See Slaatte v. State*, 129 Nev. 219, 221-22, 298 P.3d 1170, 1171 (2013) (concluding that a judgment of conviction was unappealable where it did not meet the requirements of NRS 176.106 because it was not a final judgment). Because NRS 176.105(1)(c) requires that a judgment of conviction include the sentence, Henderson’s waiver of the right to appeal his conviction necessarily includes a waiver of his right to appeal from his sentencing.

Second, Henderson argues that the waiver does not substantially comply with the language found in the model appeal waiver of NRS 174.063. “This court will enforce unique terms of the parties’ plea agreement even in cases where there has not been substantial compliance with NRS 174.063, provided that the totality of the circumstances indicates that the guilty plea was knowing, voluntary and intelligent.” *Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005). Henderson does not allege that his plea was not knowingly, voluntarily, and intelligently entered. Therefore, we conclude he failed to demonstrate the waiver was invalid for nonconformity with the model appeal waiver statute.

Finally, Henderson argues that he could not have anticipated his sentencing claims and, therefore, could not validly waive them. A waiver of the right to appeal can apply to issues that arise after the guilty plea agreement is signed so long as the denial of the right to appeal does

not work a miscarriage of justice. *Burns v. State*, 137 Nev., Adv. Op. 50, 495 P.3d 1091, 1100 (2021).¹

Henderson's first claim on appeal is that the district court abused its discretion at sentencing by giving him a prison term rather than placing him on probation. Henderson has not demonstrated a miscarriage of justice would result if this court does not consider this claim on appeal. Therefore, we conclude the issue was waived, and we decline to address this claim.

Henderson's second claim on appeal is that he was incompetent at the time of sentencing. Henderson argues that if he were incompetent at the time of his sentencing, then the denial of his right to appeal could work a miscarriage of justice. However, Henderson makes only a bare assertion that his competency—or lack thereof—at sentencing would work a miscarriage of justice. Thus, he fails to demonstrate the waiver does not apply to this issue.

To the extent the competency issue could work a miscarriage of justice, Henderson nevertheless fails to demonstrate he is entitled to relief. Henderson claims the district court erred by failing to hold a competency hearing when it questioned Henderson's competency during sentencing. At sentencing, Henderson's statement about what occurred during the offense was markedly different than that described by the victim, a witness, and

¹Henderson suggests that *Burns* be overruled. This court cannot overrule Nevada Supreme Court precedent. See *People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) (“The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court.” (quotation marks and internal punctuation omitted)); see also *Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (observing *stare decisis* “applies *a fortiori* to enjoin lower courts to follow the decision of a higher court”).

the police. After this statement, the district court discussed the differences in the facts between the parties and stated, “[Y]eah. My question is how do – does [counsel] reconcile what – the plea versus what his client has said and how do you, basically – is he competent is, I guess my question.” Counsel responded that Henderson had previously been found competent and that while counsel believed Henderson “has some memories about this event that don’t comport with all of the facts, [] he did take responsibility.”


“A person may not be tried or adjudged to punishment for a public offense while incompetent.” NRS 178.400(1). NRS 178.400(2) defines incompetent as lacking “the present ability to: (a) [u]nderstand the nature of the criminal charges against the person; (b) [u]nderstand the nature and purpose of the court proceedings; or (c) [a]id and assist the person’s counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding.” “A district court’s determination of whether a competency hearing is required is reviewed for abuse of discretion.” *Goad v. State*, 137 Nev. 167, 173, 488 P.3d 646, 653 (Ct. App. 2021). “A district court abuses its discretion and denies due process when reasonable doubt as to the defendant’s competency arises and it fails to order a competency hearing.” *Id.* at 173, 488 P.3d at 654; *see also* NRS 178.405(1).


Henderson has not demonstrated that the district court was required to conduct a competency hearing. The district court mentioned competency as a result of Henderson’s factual rendition and appears to have been reassured by counsel’s response. Henderson demonstrated that he understood the nature of the charges by admitting that he exposed himself to the victim. He also demonstrated he understood the nature of the proceedings by presenting the reasons why he believed he should have been

granted probation, including that he was remorseful, he had already served two years in jail, he had contracted COVID-19 while incarcerated, and that he needed surgery for his shoulder. Further, he demonstrated he was able to aid his counsel at the sentencing hearing when he exhibited remorse and responded to counsel's prompt to give more information regarding that remorse.

Given this record, we conclude that the totality of the circumstances did not indicate a reasonable doubt as to Henderson's competency at sentencing and the district court did not abuse its discretion by failing to conduct a competency hearing. Accordingly, we conclude Henderson failed to demonstrate the waiver was invalid for applying to issues that could only arise after entry of the plea, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk