

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ABASTA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83346-COA

FILED

JUN 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Abasta, Jr., appeals from a judgment of conviction, entered pursuant to a guilty plea, of first-degree murder, four counts of assault with the use of a deadly weapon, and two counts of robbery. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Abasta argues the district court erroneously imposed a \$250 indigent defense civil assessment fee as part of his sentence without considering whether he had the ability to pay the fee. In response, the State argues Abasta waived his right to appeal from the sentencing proceedings in his guilty plea agreement. Abasta replies that his claim is outside the scope of the waiver, the waiver is invalid because it does not substantially comply with NRS 174.063, and he did not knowingly waive his appellate rights.

First, Abasta argues that he only waived his right to appeal his "conviction," and since his waiver says nothing about his sentence or the imposition of fees, his claim is outside the scope of the waiver. Written guilty plea agreements are subject to general contract principles. *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994). Therefore, we must construe the guilty plea agreement from its plain language and enforce it

as written. See *Burns v. State*, 137 Nev., Adv. Op. 50, 495 P.3d 1091, 1097 (2021).

Abasta's appeal-waiver provision in his guilty plea agreement specifically stated 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).*" (Emphasis added.) 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 176.105 because it was not a final judgment). Because NRS 176.105(1)(c) requires that a judgment of conviction include the sentence, Abasta's waiver of the right to appeal his conviction necessarily included a waiver of his right to appeal from his sentencing. Therefore, Abasta's claim is within the scope of the waiver.

Second, Abasta argues the waiver is invalid because he could not knowingly waive his right to appeal sentencing errors that were unforeseen. 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*, 137 Nev., Adv. Op. 50, 495 P.3d at 1099-100.

Abasta argues a miscarriage of justice would result if this court does not consider his claim on appeal because the district court's sentencing error infringed upon his right to counsel. Abasta has not articulated how the imposition of the fee infringed upon his right to counsel. Further, Abasta may petition the district court at any time for relief from his


reimbursement obligation. See NRS 178.3975(3). Therefore, Abasta has failed to demonstrate a miscarriage of justice would result if this court does not consider his claim on appeal.

Finally, Abasta argues the waiver is invalid because it does not substantially comply with 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). Abasta has not demonstrated 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.

For the foregoing reasons, we conclude that Abasta waived his right to raise on direct appeal claims challenging proceedings at sentencing, including the imposition of the fee, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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