IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JESSIE JONES A/K/A CHARLES J. JONES A/K/A CHARLES JESSE JONES A/K/A CHARLES JONES A/K/A RONALD DEVALL GENTRY A/K/A CHARLES JESSI JONES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37853

FILED

JUL 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

[redacted]

CHARLES JESSIE JONES A/K/A CHARLES J. JONES A/K/A CHARLES JESSE JONES A/K/A CHARLES JONES A/K/A RONALD DEVALL GENTRY A/K/A CHARLES JESSI JONES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

These are consolidated appeals from judgments of conviction, pursuant to nolo contendere pleas, of two counts of possession of a controlled substance.[1] The district court sentenced appellant to serve two consecutive terms of 19 to 48 months in prison.

Appellant first contends that the State breached the plea agreements at sentencing by failing to recommend probation. We disagree.

When the State enters a plea agreement, it is held to "'the most meticulous standards of both promise and performance'" in fulfillment of both the terms and the spirit

[1]On June 19, 2001, we approved the parties' stipulation to consolidate these appeals.

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of the plea bargain.[2] Due process requires that the bargain be kept when the guilty plea is entered.[3]

Here, the plea agreements provided that the State would stipulate to probation but that the underlying sentences would be consecutive. However, appellant fails to acknowledge a key provision in the agreements that relieved the State of its obligation to make that recommendation. Specifically, the agreements provided that if appellant was arrested in any jurisdiction prior to sentencing, such conduct would be considered a material breach of the agreements and, as a result, the State could, at its discretion, either withdraw from the agreements and proceed with the original charges or be free to argue for an appropriate sentence. Prior to sentencing in these cases, appellant was arrested and charged with two counts of selling a substance by representing it to be a controlled substance. Accordingly, pursuant to the terms of the plea agreements, the State could either withdraw from the agreements or continue with the agreements absent the restriction on the State's sentencing recommendation. The State chose the latter option and, at sentencing, the prosecutor asked the district court to follow the Division's recommendation of two consecutive terms of 19 to 48 months in prison. Under the circumstances, we conclude that the State did not breach the plea agreements at sentencing.

Appellant next contends that the district court improperly induced appellant to enter the nolo contendere pleas by promising that it would follow the plea bargain for probation and then imposing a prison term at sentencing. We

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[2]Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (quoting Kluttz v. Warden, 99 Nev. 681, 683-84, 669 P.2d 244, 245 (1983)).

[3]Id.

conclude that this contention is not appropriate for review at this time.

In Bryant v. State,[4] we stated that we would

> no longer permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding.[5]

We have recognized a limited exception to this rule where the error is clear from the record.[6]

We recently stated in Standley v. State,[7] that a judge's involvement in plea negotiations "'"inevitably carries with it the high and unacceptable risk of coercing a defendant to accept the proposed agreement and plead guilty."'"[8] Nonetheless, we cautioned that "[t]he constitution does not forbid all participation by the judge in the plea negotiation process"[9] and that a defendant will be given an opportunity to withdraw a plea "[o]nly where the judge's conduct is improperly coercive."[10]

Here, appellant relies on a discussion during the plea canvass as evidence that the district court coerced him into accepting the plea negotiations. In the middle of the

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[4]102 Nev. 268, 721 P.2d 364 (1986).

[5]Id. at 272, 721 P.2d at 368.

[6]See, e.g., Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994); Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1986).

[7]115 Nev. 333, 990 P.2d 783 (1999).

[8]Id. at 336, 990 P.2d at 785 (quoting Smith v. State, 110 Nev. 1009, 1014, 879 P.2d 60, 63 (1994) (quoting United States v. Bruce, 976 F.2d 552, 556 (9th Cir. 1992))).

[9]Id. at 337, 990 P.2d at 785.

[10]Id. at 338, 990 P.2d at 785.

plea canvass, the district court judge indicated that appellant seemed familiar to him and confirmed with appellant that he had appeared before the judge for sentencing in a prior case that also involved controlled substances. During that discussion, the judge expressed his concern that appellant had been arrested on two felonies in the seven months since his release from prison on the prior case. At that point, defense counsel commented:

> Your Honor, based on your comments, and I understand it's in the Court's discretion as to whether they follow a plea negotiation in this matter, based on your comments that there's no chance that you would follow that negotiation—[11]

In response, the district court stated, "I'll follow the plea negotiations. [Appellant] and I are old friends. That's what the comments are for." The district court judge then reiterated his concerns about appellant's quick arrests and stated, "But am I going to follow the recommendations? Obviously prison doesn't do him any good. Yeah." Later in the plea canvass, the district court asked appellant whether he understood that the court did not have to follow the negotiations and appellant responded in the affirmative.

We conclude that it is not clear from the record that the district court coerced appellant into pleading nolo contendere. Standley is distinguishable. In that case, the State had made an offer, but the defendant had not accepted it and was proceeding to trial. The district court conducted a hearing to discuss the plea offer with the defendant and effectively convinced the defendant to accept the offer.[12] In

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[11]We note that the district court never indicated that there was "no chance" it would follow the negotiations. It appears that defense counsel was simply making an inference based on the court's prior knowledge of appellant.

[12]115 Nev. at 334-37, 990 P.2d at 783-85.

this case, appellant had already accepted the plea offer when he appeared for the arraignment and plea canvass. Moreover, it is not clear from the record that appellant went forward with the plea agreements as a result of the district court's comments. In fact, the record suggests otherwise. Because it does not clearly appear from the record that the district court coerced appellant into entering the pleas, we decline to resolve this issue on appeal because it has not previously been raised in the district court.[13]

Having considered appellant's contentions and concluded that they either lack merit or are not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

[13]To the extent that appellant argues that the district court breached its promise to follow the negotiations, we conclude that this contention lacks merit. Because appellant was arrested on new criminal charges prior to sentencing, the negotiations did not provide for any particular sentence.