

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NELSON TORRES-ARCIGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84398-COA

FILED

FEB 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nelson Torres-Arciga appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted low-level trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Torres-Arciga argues his conviction should be reversed because his plea was not knowingly, voluntarily, and intelligently entered. Specifically, he claims he does not speak English, counsel signed the guilty plea agreement for him, and the district court did not ensure he understood the nature of the offense.

Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). “Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance” *Id.* at 272, 721 P.2d at 368; *see also Smith*, 110 Nev. at 1010-11 n.1, 879 P.2d at 61 n.1 (stating that unless the error clearly appears from the record, a challenge to the validity of a guilty plea must be first raised in the district court in a motion to withdraw guilty plea or postconviction petition for a writ of habeas corpus).

Torres-Arciga did not previously raise a challenge to the validity of his guilty plea in the district court, and the alleged errors do not clearly appear in the record. Therefore, we decline to consider this claim on appeal.

Second, Torres-Arciga appears to challenge the criminal complaint by arguing that the documentation attached to the criminal complaint did not support the charge of trafficking in a controlled substance. This claim was waived by entry of his guilty plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (stating that the entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the guilty plea). Thus, Torres-Arciga fails to demonstrate he is entitled to relief on this claim.

Finally, Torres-Arciga argues his sentence constitutes cruel and unusual punishment because the statute under which he was convicted was changed by the Legislature and he could not have been convicted under the amended statute given the facts of his case. Thus, Torres-Arciga claims that his sentence was excessively harsh.

Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime). “[U]nless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of a crime.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008).

In March 2020, Torres-Arciga was caught with 11 grams of methamphetamine. He pleaded guilty to attempted low-level trafficking of between 4 and 14 grams of methamphetamine pursuant to 2015 Nev. Stat., ch. 506, § 6, at 3088 (former NRS 453.3385(1)(a)) and 2013 Nev. Stat., ch. 229, § 3, at 977-78 (former NRS 193.330). Effective July 1, 2020, the Legislature increased the amount of methamphetamine that would qualify for low-level trafficking from 4 to 14 grams to 100 to 400 grams. NRS 453.3385(1)(a); 2019 Nev. Stat., ch. 633, § 137, at 4488.

Because Torres-Arciga committed his crime prior to the effective date of the changes to NRS 453.3385 and the Legislature did not express its intent to have the changes to NRS 453.3385 apply retroactively, Torres-Arciga was properly convicted under the prior version of NRS 453.3385. Further, the sentence imposed of 2 to 5 years in prison is within the parameters provided by the statutes in effect at the time he committed his crime, *see* 2015 Nev. Stat., ch. 506, § 6, at 3088; 2013 Nev. Stat., ch. 229, § 3, at 977-78, and Torres-Arciga does not demonstrate those statutes were unconstitutional. Therefore, Torres-Arciga fails to demonstrate his sentence is excessively harsh or that his sentence constitutes cruel and unusual punishment. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Low Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk