

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT V. COMITO,

No. 38097

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 05 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of theft. The district court sentenced appellant to serve two consecutive terms of 19 to 48 months in prison. The district court then suspended execution of the sentence and placed appellant on probation for 5 years.

Appellant first argues that his guilty plea was not knowingly and voluntarily entered because he did not understand that the district court could order that the underlying sentences be served consecutively. We have held, however, that challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.¹ Because appellant has not challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of conviction.²

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

²Id. Although we do not reach the merits of appellant's contention, we note that this court has held that the possibility of consecutive sentences is a collateral consequence of which a defendant need not be informed before pleading guilty. See Rosemond v. State, 104 Nev. 286, 756

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Appellant also seems to argue that the consecutive sentences imposed by the district court violate the plea agreement. He therefore asks this court to modify the judgment of conviction to provide for concurrent sentences. We conclude that this contention lacks merit.

The plea agreement in this case provided that the State retained "the right to argue at sentencing for underlying sentence and consecutive time with Defendant's other case but will have no opposition to probation." The agreement further provided that appellant's guilty plea was conditioned on his receiving probation and expressly provided that appellant could withdraw his plea if the district court did not grant him probation. Contrary to appellant's assertions, the agreement did not provide that appellant's guilty plea was conditional on his receiving concurrent sentences. In fact, the agreement specifically informed appellant that the district court had the discretion to impose consecutive sentences. The district court also addressed the possibility of consecutive sentences during the plea canvass and ensured that appellant understood that the court could impose the underlying sentences consecutively. Based on the record, it is clear that appellant did not plead guilty on the condition that he would receive concurrent sentences.³ We therefore conclude that the sentence imposed does not violate the terms of the plea agreement.

. . . continued

P.2d 1180 (1988). Moreover, as discussed below, it is clear from both the plea agreement and the oral plea canvass that appellant understood that the district court could impose consecutive sentences.

³To the extent that appellant also argues that the State breached the plea agreement at sentencing, we conclude that that argument also lacks merit because the State's arguments at sentencing complied with both the letter and the spirit of the plea negotiations. See generally Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986).