

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL BERINGER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38147

**FILED**

OCT 12 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea,<sup>1</sup> of two counts of attempt lewdness with a child under fourteen years of age (counts I and II) and two counts of possession of visual presentation depicting sexual conduct of a person under sixteen years of age (counts III and IV). The district court sentenced appellant to two concurrent prison terms of 60 to 240 months for counts I and II and to two concurrent prison terms of 12 to 60 months for counts III and IV.

Appellant's sole contention is that his guilty plea was not knowingly and voluntarily entered because he misunderstood the sentencing consequences arising from his guilty plea. As appellant recognizes, this court does not allow "a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction."<sup>2</sup> Such challenges must be raised "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."<sup>3</sup> Moreover, our review of the record in this case fails to reveal any clear error that would allow an exception to the general

---

<sup>1</sup>Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

<sup>2</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

<sup>3</sup>Id.

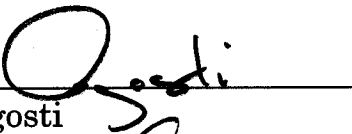
01-17204


rule set forth in Bryant.<sup>4</sup> Finally, we decline appellant's invitation to overrule our holding in Bryant.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Joseph T. Bonaventure, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

---

<sup>4</sup>See Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).