

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN RICHARD BARTLETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87629-COA

FILED

JAN 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING JUDGMENT AND REMANDING

Stephen Richard Bartlett appeals from a judgment of conviction, entered pursuant to a guilty plea, of grand larceny. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Bartlett argues the district court abused its discretion by denying his motion to relieve counsel based on a conflict of interest. In his motion, Bartlett argued that counsel failed to explain the possible sentences under the habitual criminal statute to him and, thus, his plea was not knowingly and voluntarily entered. Bartlett argued that counsel should be withdrawn because if a motion to withdraw guilty plea was filed, counsel would be a witness at any hearing granted.

In reviewing a denial of a motion to relieve counsel, we consider: “(1) the extent of the conflict; (2) the adequacy of the inquiry; and (3) the timeliness of the motion.” *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (quoting *United States v. Moore*, 159 F.3d 1154, 1158-59 (9th Cir. 1998)).

At the hearing on the motion to relieve counsel, the district court heard argument from counsel that she would be a witness at a motion to withdraw guilty plea hearing if a motion to withdraw guilty plea was

filed. Counsel also stated that, while the motion was filed close to sentencing, she filed the motion as soon as she realized the potential conflict. Counsel stated that when going over the presentence investigation report with Bartlett, Bartlett informed her that she never discussed the possible penalties for the habitual criminal statute, and he did not understand those possible penalties when he entered his plea. Counsel stated the conversation occurred on a Friday and she filed the motion the following Monday, six days before the scheduled sentencing hearing.

First, we conclude that the extent of the conflict was potentially great had Bartlett wished to withdraw his guilty plea. Counsel would be required to become a potential witness against Bartlett at a hearing on the motion. *See* NRPC 3.7(a) (stating “[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness”). Second, the district court failed to inquire as to whether Bartlett wanted to file a motion to withdraw his guilty plea.¹ Thus, the inquiry into the conflict was inadequate. Third, while the motion was filed close to the sentencing date, counsel filed the motion as soon as possible after learning of the conflict.

¹Instead, the district court concluded that Bartlett’s claim regarding the habitual penalties lacked merit and was belied by the record because: counsel negotiated away the habitual criminal statute as a sentencing possibility and thus there was no need to explain the possible penalties; the motion to strike the prior convictions used for habitual criminal enhancement was well done and therefore counsel was effective; and Bartlett knew that the habitual criminal statute was a possibility and the penalties were outlined in the guilty plea agreement. These findings were not sufficient to demonstrate that Bartlett’s claim regarding understanding the potential penalties lacked merit or was belied by the record. Bartlett was not canvassed regarding the potential penalties under the habitual criminal statute at the change of plea hearing and the record does not demonstrate that counsel specifically explained those possible penalties to Bartlett and that he understood them.

Thus, we conclude that the district court abused its discretion by denying Bartlett's motion to relieve counsel without conducting a proper inquiry into the alleged conflict. Therefore, we vacate the judgment of conviction and remand for the district court to conduct a full inquiry into the alleged conflict pursuant to *Young*, 120 Nev. at 968, 102 P.3d at 576. Accordingly, we

ORDER the judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Given our disposition in this case, we decline to consider Bartlett's other claims raised on appeal.