

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL E. HENSLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38378

FILED

MAY 30 2002

JANE TEM BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Michael E. Hensley's petition for the correction of an illegal sentence.

Hensley was convicted, pursuant to a guilty plea, of one count of murder with the use of a deadly weapon.¹ The district court sentenced Hensley to serve two consecutive terms of life in prison with the possibility of parole; he was given credit for 337 days time served.²

On April 17, 2001, Hensley filed a petition for the correction of an illegal sentence in the district court. The State opposed the petition. On June 28, 2001, the district court orally denied Hensley's petition. This timely appeal followed.

Hensley contends that his sentence was illegal because the State failed to certify him as an adult when he was initially charged with manslaughter and robbery, and that without the certification, the district

¹Hensley was originally charged by way of a criminal information on November 19, 1991, with one count each of murder, manslaughter, attempted murder, and robbery, all with the use of a deadly weapon.

²The judgment of conviction was filed in the district court on June 4, 1992.

court did not retain jurisdiction over his case.³ As a result, Hensley argues that this court should allow him to withdraw his guilty plea. We conclude that Hensley's argument is patently without merit and that he is not entitled to the relief requested.

Initially, we note that pursuant to negotiations, the State agreed to the dismissal of all of the other charges against Hensley in exchange for his guilty plea to one count of first-degree murder with the use of a deadly weapon. Therefore, Hensley's argument that his sentence was illegal because he was never certified as an adult with regard to the manslaughter and robbery charges is moot.

Moreover, we conclude that even if the manslaughter and robbery charges had not been dismissed, Hensley's argument would still be without merit because certification as an adult was not required in his case, and the juvenile court was statutorily divested of jurisdiction. NRS 62.040(1)(b)(1), in effect at the time of Hensley's offense, provided:

[T]he [juvenile] court has exclusive original jurisdiction in proceedings: [c]oncerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he: [c]ommits an act designated a crime under the law of the State of Nevada except murder or attempted murder, or any related crime arising out of the same facts as the murder or attempted murder.⁴

We conclude that the district court was properly vested with jurisdiction over Hensley's case without requiring his certification as an adult, and

³Hensley was fifteen years of age when he entered his guilty plea in the district court. See generally NRS 62.080.

⁴1989 Nev. Stat., ch. 408, § 3, at 867 (emphasis added).

that his sentence was not illegal.⁵ Therefore, we conclude that the district court did not err in denying Hensley's petition on this ground.

Additionally, Hensley raises the issue of withdrawing his guilty plea for the first time on appeal; this claim was not raised in his petition below. We have held 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 34.⁶ Therefore, we conclude that this claim is not appropriate for review on appeal from the district court's denial of Hensley's petition to correct an illegal sentence.⁷

Finally, Hensley contends that the State of Nevada's statutory framework allows prosecutors unfettered "jurisdictional discretion" in violation of the due process clauses in the state and federal constitutions. More specifically, Hensley argues that due process guarantees are violated because: "If a killing is charged as murder, the case must go to the adult court. If a killing is charged as a manslaughter, then the case could go to Juvenile Court. These are decisions solely in the hands of the prosecutor." We conclude that Hensley's contention is without merit.

Initially, we note that Hensley has not cited to any relevant authority in support of his contention. Moreover, we conclude that

⁵See Elvik v. State, 114 Nev. 883, 894, 965 P.2d 281, 288 (1998) (recognizing that "[t]his court has held that a juvenile defendant does not need to be certified as an adult when the charged offense is excluded from the statutory definition of a delinquent act") (citing Shaw v. State, 104 Nev. 100, 102-03, 753 P.2d 888, 889 (1988)).


⁶Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).


⁷State v. Wade, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

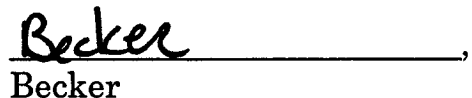
Hensley is mistaken in his belief that prosecutors have "jurisdictional discretion." This court has stated that the prosecutor retains the discretion to file the appropriate charges against an offender, and the prosecution of a "criminal case is within the entire control of the district attorney."⁸ The legislature, however, in enacting present-day NRS 62.040(2)(a)-(e), effectively divested the juvenile courts of jurisdiction over certain enumerated offenses, including, as in Hensley's case, first-degree murder with the use of a deadly weapon. Therefore, we conclude that Hensley's argument is untenable and that the district court did not err in denying his petition.

Having considered Hensley's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.⁹


Shearing, J.


Rose, J.


Becker, J.

⁸Cairns v. Sheriff, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973).

⁹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. Jeffrey D. Sobel, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk