IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40200

FILED

DEC 31 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of larceny from the person, victim 65 years of age or older. The district court sentenced appellant Andrew Young to serve two consecutive prison terms of 12 to 30 months.

Young contends that the guilty plea is invalid because he was not advised that he was pleading guilty to an offense with a mandatory equal and consecutive enhancement for the elderly victim. We decline to consider Young's contention.

As Young acknowledges, this court has stated:

> [W]e will no longer permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea 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.[1]

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

02-22200

Young argues that the error in this case is clear from the record and, therefore, this court should consider the validity of the plea agreement on direct appeal as it did in Lyons v. State,[2] and Smith v. State.[3] We conclude that the issue raised in this appeal is not similar to the issues raised in Lyons and Smith and that an exception to the general rule stated in Bryant is not warranted in this case. Therefore, Young must pursue his claim regarding the validity of his guilty plea in the district court in the first instance.

Young next contends that the district court erred at sentencing by imposing the elderly enhancement without making an express finding that the victim was actually over 65 years of age, as required by NRS 193.167(3). Preliminarily, we note that Young failed to object to the imposition of the elderly enhancement and, to the contrary, conceded that Young's victim was elderly and that an equal and consecutive term should be imposed. As a general rule, failure to object below bars appellate review; however, this court may address plain error or issues of constitutional dimension sua sponte.[4]

In the instant case, we conclude that there is no plain or constitutional error. NRS 193.167(3) provides that the elderly

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[2]105 Nev. 317, 775 P.2d 219 (1989).

[3]110 Nev. 1009, 879 P.2d 60 (1994).

[4]See Emmons v. State, 107 Nev. 53, 60-61, 807 P.2d 718, 723 (1991), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

enhancement "does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact." Because the requisite finding of prescribed fact in NRS 193.167(3) -- that the victim is a person over the age of 65 -- does not concern a prior conviction, the finding must occur during trial and proved beyond a reasonable doubt.[5] However, where a defendant pleads guilty to the crime charged, the State is relieved from its burden to prove the elements of the crime and the statutory enhancement beyond a reasonable doubt.

Here, Young pleaded guilty to larceny of a victim over 65 years of age and expressly stated, at the plea canvass, that he was pleading guilty because he took personal property from a person 65 years of age or older. Therefore, the district court did not err at sentencing in imposing the elderly enhancement because Young's admission that his victim was over 65 years of age obviated the need for the State to prove this fact at trial.[6]

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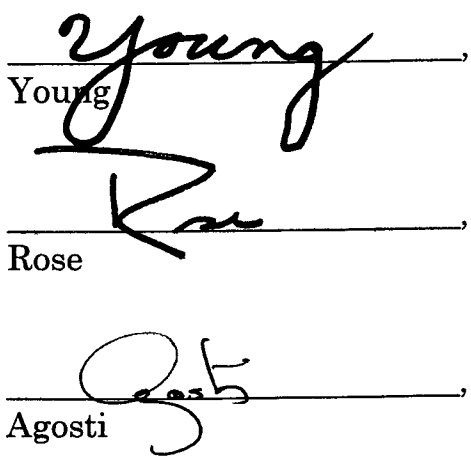
[5]See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.").

[6]Cf. Krauss v. State, 116 Nev. 307, 998 P.2d 163 (2000) (holding that the State need not prove prior convictions at sentencing in order to enhance DUI to a felony where defendant conceded prior convictions).

Having considered Young's contentions and concluded that they either lack merit or are not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.[7]



_____, C.J.
Young

_____, J.
Rose

_____, J.
Agosti

cc: Hon. Nancy M. Saitta, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Andrew Young
Clark County Clerk

[7]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.