

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCELLO A. RANDAZZO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40710

FILED

APR 09 2003

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of sale of a controlled substance. Appellant Randazzo was sentenced to serve a term of 19 to 48 months in the Nevada State Prison.

Randazzo argues that his guilty plea was invalidly entered because the district court did not canvass him sufficiently. He contends that his plea was not voluntarily entered, that he may have had a viable defense to the charge, and that the district court did not mention the agreement he had made with the State regarding possible probation or ask him if any additional promises had been made to him.¹ We conclude that Randazzo's argument is not properly before this court.


The record shows that Randazzo made a pre-sentence motion to withdraw his guilty plea on the basis that he was pressured into entering the plea. The district court appointed conflict counsel to represent Randazzo for the limited purpose of reviewing his plea. Randazzo then withdrew his motion to withdraw his plea, and the district court proceeded to sentence him. We conclude that because Randazzo

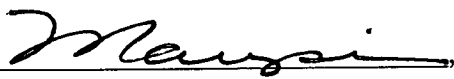
¹See Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001).

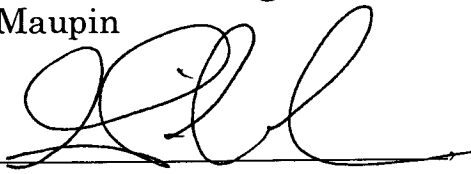
withdrew his motion, his claim regarding the validity of his plea will not be considered on direct appeal.² We have reviewed his claim and conclude that the record does not reveal any clear error to warrant relief at this juncture.³

We also note that a challenge to the validity of a guilty plea may not be raised on direct appeal from a judgment of conviction, but must be raised before the district court in the first instance, either by bringing a motion to withdraw the guilty plea or by initiating a post-conviction proceeding.⁴ Therefore, we

ORDER this appeal DISMISSED.⁵


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

²See Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984) (noting that a denial of a pre-sentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings).

³See Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994) (considering validity of a guilty plea on direct appeal where the error is clear from the record).

⁴Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk