

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERMENEGILDO ESCALERA-
BARRAGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent

No. 40927

FILED

FEB 11 2004

ORDER OF AFFIRMANCE

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 trafficking in a controlled substance. The district court sentenced appellant to a prison term of 10 to 25 years, and ordered appellant to pay a fine in the amount of \$50,000.00.

Appellant contends that the search warrant was defective, that he was entrapped, that he did not validly consent to the search, that he was actually a procuring agent in this transaction, and that statements were obtained from him in violation of Miranda.¹

However, by pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea.² There is a statutory exception to this principle. NRS 174.035(3) provides, in pertinent part: "With the consent of the court and the district attorney, a defendant may enter a conditional plea of

¹Miranda v. Arizona, 384 U.S. 436 (1966).

²See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion." (Emphasis added.)

In this case, although appellant expressed a desire to challenge the rulings on his pretrial motions on direct appeal, the State refused to consent. The issues were therefore not reserved for appeal, and were waived.

Appellant argues that NRS 174.035(3) unconstitutionally deprived him of his right to appeal. However, as previously noted, appellant had no right to appeal the pretrial rulings once he entered his guilty plea, except to the extent permitted by NRS 174.035(3). The statute in question, rather than restricting the right to appeal, actually expands the right by allowing defendants, under some circumstances, to raise issues that would have been waived otherwise.

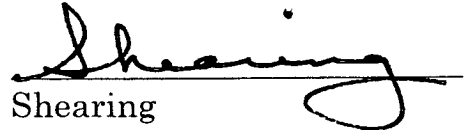
Before entering his plea, appellant was informed that the State would not consent to a reservation of the right to appeal the pretrial issues. If he had wished not to waive those issues, he should not have entered a guilty plea. Having concluded that the issues were not reserved for appeal, we will not address the merits.

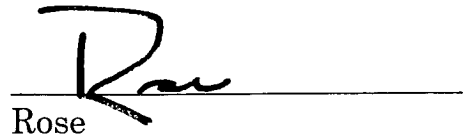
Appellant also contends that the fine imposed in this case was unconstitutionally excessive. This court has previously considered and rejected this contention.³

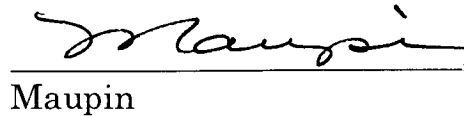
³See Wischmeier v. State, 107 Nev. 371, 811 P.2d 1307 (1991).

Having considered appellant's contentions and concluded that they have either been waived or are without merit, we

ORDER the judgment of conviction AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Jerome Polaha, District Judge
Karla K. Butko
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk