

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY WAYNE SCHERER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41600

FILED

MAR 11 2004

NEVADA
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford plea,¹ of one count of second-degree murder. Appellant Gary Wayne Scherer was originally convicted in 1995, along with codefendant Claudia Lynn Canada, pursuant to a jury verdict, of one count each of conspiracy to commit murder, burglary, robbery of a person 65 years of age or older, and first-degree murder with the use of a deadly weapon. On direct appeal, this court reversed and remanded, concluding that a new trial was warranted because “juror misconduct . . . was so pervasive as to taint the fairness of Scherer and Canada’s convictions.”² Scherer eventually pleaded guilty after the remand, and the district court ultimately sentenced him to time already served in custody – 8 years, 7 months, and 21 days.

Scherer contends that the district court committed reversible error by denying his motion for a Franks hearing without conducting an

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Canada v. State, 113 Nev. 938, 941-42, 944 P.2d 781, 783 (1997).

evidentiary hearing.³ Scherer argues that his arrest was unlawful because the affidavit in support of the arrest warrant lacked probable cause and “was based exclusively upon informant hearsay statements without any corroboration whatsoever in support of their trustworthiness.” We conclude that Scherer: (1) failed to properly preserve this issue for review on appeal; and (2) waived this issue by subsequently pleading guilty.

This court has stated that, generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea.⁴ “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”⁵ Additionally, the United States Supreme Court in Haring v. Prosise stated that “when a defendant is convicted pursuant to his guilty plea rather than a trial, the validity of that conviction cannot be affected by an alleged Fourth Amendment violation because the conviction does not rest in any way on evidence that may have been improperly seized.”⁶ Nevertheless, NRS

³A Franks hearing is a special suppression hearing conducted to examine an alleged falsehood in an affidavit supporting a search warrant. See Franks v. Delaware, 438 U.S. 154 (1978); Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990), abrogated on other grounds by Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001).

⁴See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

⁵Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)); see also Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (pleas of nolo contendere waived constitutional claims based on events occurring before entry of the pleas).

⁶462 U.S. 306, 321 (1983).

174.035(3) allows, with the consent of the district court and the district attorney, a defendant pleading guilty to reserve in writing the right to appeal an adverse determination on a specified pretrial motion.

In the instant case, Scherer entered into an Alford plea nearly two months after the district court denied his motion for a Franks hearing. Moreover, Scherer does not allege, and the record does not indicate, that he preserved the right to appeal this issue pursuant to NRS 174.035(3) prior to pleading guilty. Therefore, we decline to consider the merits of Scherer's contention because his claim was waived when he entered his Alford plea.

Accordingly, having considered Scherer's contention and concluded that it has not been preserved for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Daniel J. Albrechts, Ltd.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk