

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN EVERETT ATKINSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41873

FILED

JUL 29 2004

ORDER OF AFFIRMANCE

JANETTE J. 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 battery constituting domestic violence, third offense. Third Judicial District Court, Churchill County; Robert E. Estes, Judge. The district court sentenced appellant Stephen Everett Atkinson, Jr., to serve a prison term of 24 to 60 months to run consecutively to the sentence imposed in a Washoe County case.

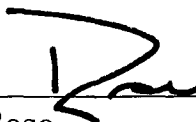
Atkinson's sole contention is that his guilty plea was unknowing because he was not advised that the sentence imposed would run consecutively to the Washoe County case, pursuant to NRS 176.035. We decline to consider this contention. Generally, this court will not consider a challenge to the validity of the guilty plea on direct appeal from the judgment of conviction.¹ "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

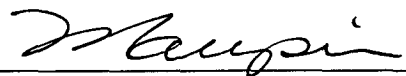
¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2000), and Smith v. State, 110 Nev. 1009, 1010 n.1, 879 P.2d 60, 61 n.1 (1994).

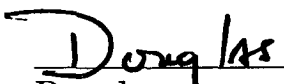
initiating a post-conviction proceeding."² Therefore, we conclude that Atkinson must first raise his challenge to the validity of his guilty plea in the district court.

Having concluded that Atkinson's contention is not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Robert E. Estes, District Judge
T. Laura Lui
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk

²Bryant, 102 Nev. at 272, 721 P.2d at 368.