

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRENT G. ENGLISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42562 **FILED**

APR 25 2005

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one gross misdemeanor count of conspiracy to commit larceny. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant Trent English pleaded guilty to conspiracy to commit larceny and was sentenced to six months in the Clark County Detention Center. The district court suspended his sentence and placed him on probation for an indeterminate period not to exceed eighteen months. In addition, the district court ordered English to submit to genetic marker testing and to pay an administrative assessment and DNA fees totaling \$175.00.

On appeal, English claims that the district court erred in ordering him to submit to genetic marker testing because his conviction for gross misdemeanor conspiracy to commit larceny does not fall within the purview of NRS 176.0913. Although he objected to paying a DNA fee, he did not challenge the district court's authority to order genetic marker testing. In his brief, English relies on the current version of NRS 176.0913. However, the statute has been amended since English

committed his crime. English does not raise this issue, but NRS 176.0913 did not mandate genetic marker testing for a person convicted of conspiracy at the time he committed his crime.¹

Generally, a failure to object to an alleged error waives appellate review.² However, this court may exercise its discretion to address an error if it is plain and affects an appellant's substantial rights.³ Here, we conclude that the district court committed plain error because the version of NRS 176.0913 effective at the time English committed his crime did not require genetic marker testing for a conviction for conspiracy. Therefore, we reverse that portion of the judgment ordering English to submit to genetic marker testing and to pay the accompanying DNA fee.

English also complains that the district court erred in requiring him to pay an administrative assessment fee because he is indigent. However, his alleged indigence does not make the imposition of the challenged fee improper where, as here, he has not been imprisoned for nonpayment of the fee.⁴ Moreover, the district court determined that English was financially able to pay the fee. Consequently, we conclude no relief is warranted in this regard. Accordingly, we

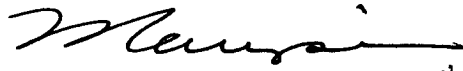
¹2001 Nev. Stat., ch. 589, §6, at 3032-33; 2001 Nev. Stat., ch. 589, §13, at 3041.

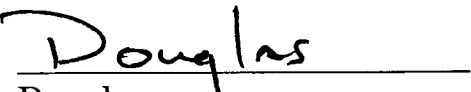
²See Harkness v. State, 107 Nev. 800, 802 n.1, 820 P.2d 759, 760 n.1 (1991).

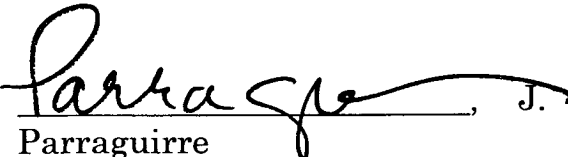
³See NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

⁴See Gilbert v. State, 99 Nev. 702, 708, 669 P.2d 699, 703 (1983).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND to the district court to enter an amended judgment consistent with this order.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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