

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY WILLIAM PORTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58327

FILED

MAY 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of child abuse and neglect with substantial bodily harm. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Anthony William Portillo contends that, at a minimum, he is entitled to a resentencing before a different judge and that the State should be bound by its agreement to not oppose probation because the plea agreement's failure-to-appear clause is void and unenforceable and the State's recommendation of prison time contravenes this court's holdings in Gamble v. State, 95 Nev. 904, 604 P.2d 335 (1979), and Villalpando v. State, 107 Nev. 465, 814 P.2d 78 (1991). To the extent Portillo argues that the failure-to-appear clause is void and unenforceable or that the State breached the plea agreement, these arguments are foreclosed by our opinion in Sparks v. State, 121 Nev. 107, 109-12, 110 P.3d 486, 487-89 (2005).

To the extent that Portillo contends that the State's recommendation of prison time "may have stripped [his] guilty plea of its voluntariness," Villalpando, 107 Nev. at 466, 814 P.2d at 79, we have repeatedly stated that challenges to the validity of a guilty plea must generally be raised in the district court in the first instance by either filing

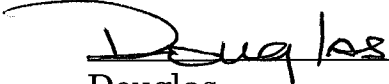
a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS Chapter 34, see Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited by Smith v. State, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). The record does not indicate that Portillo challenged the validity of his plea in the district court, and we conclude that his claim is not appropriate for review in this appeal.


Portillo also contends that he should be permitted to withdraw his guilty plea or specifically enforce a recommendation of probation because the district court bound itself to and/or altered the terms of his guilty plea and then violated those terms by not sentencing him to probation. We disagree. Portillo's plea memorandum clearly stated that the State reserved the right to argue for prison time if Portillo failed to appear or committed a new offense. Furthermore, the district court did not promise Portillo that it would grant him probation but stated that it did not have any reason, at that moment, not to follow the negotiation. Portillo supplied the court with that reason by failing to appear and picking up a new domestic violence charge.¹ Under the plea agreement, Portillo's failure to appear permitted the State to argue for the term of imprisonment recommended by the Division of Parole and Probation. Even if the district court bound itself to the plea agreement, because the district court's promise was also conditioned on Portillo's appearance, it did not violate the terms or spirit of the agreement by following the State's

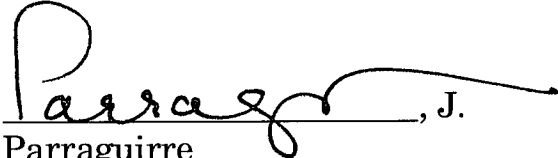
¹We decline to consider Portillo's contention that the district court erred by refusing to grant a continuance to allow this charge to be resolved. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

recommendation after Portillo failed to appear, see Van Buskirk v. State,
102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986), and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk