

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL HARVEY RIGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64778

DANIEL HARVEY RIGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64780 ✓

FILED

FEB 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from amended judgments of conviction entered pursuant to nolo contendere pleas of two counts of attempted sexual assault. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. We elect to consolidate these appeals for disposition. *See* NRAP 3(b)(2).

Disclosure of confidential information

Appellant Daniel Riggs claims that the district court erred by allowing disclosure of confidential documents in violation of NRS 200.3771-.3773. However, the district court granted the State's motion for disclosure of these documents *before* Riggs entered his nolo contendere pleas and the record does not demonstrate that Riggs reserved the right to a review of this claim. *See* NRS 174.035(3); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (the entry of a nolo contendere plea

waives any right to appeal from events occurring before the entry of the plea except for those involving the voluntariness of the plea itself). Accordingly, we decline to review this claim of error.

Health records and independent examination

Riggs claims that the district court erred by denying his motions for access to victim Megan L.'s out-of-state health records and for an independent physical and mental examination. Riggs asserts that the State made Megan L.'s health material to his sentencing. And Riggs argues that the district court's refusal to allow him to pursue this matter violated his constitutional rights to confront his accusers and his statutory rights pursuant to NRS 174.395-.445 (Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings) and NRS 176.015(2)(b)(1) (defendant's right to present information in mitigation of punishment at sentencing).

We review a district court's rulings on motions regarding access to out-of-state records and independent psychological examinations for abuse of discretion. *See Wyman v. State*, 125 Nev. 592, 605, 217 P.3d 572, 581 (2009); *Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (2006). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks omitted).

The district court heard argument on Riggs' motions and found that the State did not have possession, custody, or control of the

victim's health records; the State was not calling a psychologist or psychiatrist to testify at sentencing and therefore it would not have an unfair advantage over Riggs; there was overwhelming evidence of the offenses beyond the victim's testimony; Riggs failed to prove that the victim's mental state may have affected her veracity; and Riggs failed to meet his burden to show a compelling need for this information. The district court further determined that Riggs did not have a confrontation right at sentencing and his innocence was no longer at issue. The district court denied his motions for access to out-of-state records and independent psychological examinations and his request for a certificate of materiality.

We conclude that the district court's findings are supported by the record and that Riggs has failed to demonstrate that the district court abused its discretion in this regard. See NRS 174.235 (identifying the prosecutor's disclosure obligations and the defendant's discovery limitations); *Wyman*, 125 Nev. at 605, 217 P.3d at 581 (identifying the two-part inquiry for determining whether a district court abused its discretion by denying a request for a certificate of materiality); *Abbott*, 122 Nev. at 718, 138 P.3d at 464 (reinstating the test set forth in *Koerschner v. State*, 116 Nev. 1111, 13 P.3d 451 (2000), for determining whether to order an independent psychological examination of a victim in a sexual assault case); *Summers v. State*, 122 Nev. 1326, 1332-33, 148 P.3d 778, 782-83 (2006) (concluding that the right to confrontation does not apply in sentencing proceedings); see also *Buschauer v. State*, 106 Nev. 890, 893-94, 804 P.2d 1046, 1048 (1990).

Prosecutorial misconduct

Riggs claims that prosecutorial misconduct deprived him of due process under the state and federal constitutions. Riggs argues that the prosecutor intentionally withheld discovery of a Sparks Police Department report concerning uncharged misconduct committed in Oregon until after he had entered his nolo contendere pleas. And Riggs asserts that the prosecutor's discovery violation perverted the plea bargaining process.

We analyze claims of prosecutorial misconduct in two steps: first, we determine whether the prosecutor's conduct was improper, and second, if the conduct was improper, we determine whether it warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "[We] will not reverse a conviction based on prosecutorial misconduct if it was harmless error." *Id.*

Riggs presented this claim as a discovery violation in the court below and sought sanctions against the prosecutor. The district court found that the report in question related to an investigation being considered by a sitting grand jury in Oregon and that the State's disclosure of information concerning an ongoing investigation in another jurisdiction would have been inappropriate and perhaps illegal. We note that the report was made available to Riggs shortly after he was indicted by the Oregon grand jury, and we conclude that Riggs has not demonstrated that the prosecutor's conduct was improper in this regard.

Motion to withdraw plea

Riggs claims that the district court erred by denying his motions to withdraw his nolo contendere pleas, which were based on claims of factual innocence. Riggs asserts that he would not have entered his nolo contendere pleas if he had known that he would be facing charges for similar criminal conduct in Oregon. And Riggs argues that he should have been allowed to withdraw his pleas because the prosecutor had intentionally withheld discovery of information critical to his plea decisions, his pleas were entered under a misconception of their consequences, and his motions to withdraw were made before the State suffered any prejudice.

A defendant may move to withdraw a plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a motion "for any substantial, fair, and just reason." *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). "The question of a [defendant's] guilt or innocence is generally not at issue in a motion to withdraw a guilty plea." *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 224 (1984). "On appeal from a district court's denial of a motion to withdraw a guilty plea, [we] will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion." *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (internal quotation marks omitted).

The district court heard argument on Riggs' motions and found, among other things, that Riggs was not entitled to discovery about the Oregon matter and his preference for proceeding to trial on the original Nevada charges rather than face the Oregon charges after having been convicted on his nolo contendere pleas was not a substantial reason for withdrawing the pleas. We conclude Riggs has not demonstrated that the district court abused its discretion in this regard.¹

Motion to continue sentencing

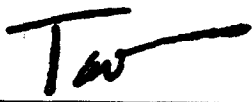
Riggs claims that the district court erred by denying his motions to continue sentencing, which were based on untimely disclosures of the presentence investigation report. Riggs argues that he did not have enough time to seek, process, and investigate mitigating information due to the late disclosure of the presentence investigation report. We review a district court's decision to grant or deny a motion for continuance for an abuse of discretion. *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." *Higgs v. State*, 126 Nev. ___, ___, 222 P.3d 648, 653 (2010). "However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's

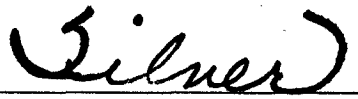
¹To the extent that Riggs asks this court to modify the law regarding presentence motions to withdraw guilty pleas, we note that the Nevada Supreme Court's decisions are binding on this court and we decline to do so.

decision to deny the continuance is not an abuse of discretion." *Id.* Here, Riggs has not demonstrated actual prejudice arising from the denial of his motions to continue sentencing; therefore, we conclude that the district court did not abuse its discretion in this regard.

Having concluded that Riggs is not entitled to relief, we
ORDER the judgments of conviction AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Dennis E. Widdis
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We deny Riggs' requests for oral argument. NRAP 34(f)(1).