

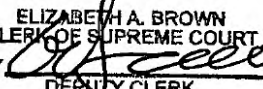
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GRACE DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86574-COA

FILED

MAR 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Grace Diaz appeals from a judgment of conviction, entered pursuant to a guilty plea, of felony child abuse or neglect and gross misdemeanor child abuse or neglect. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Diaz argues the district court abused its discretion at sentencing by “repudiating” the guilty plea agreement. In particular, Diaz contends the district court (1) imposed a sentence of imprisonment rather than granting her probation as contemplated by the plea agreement, and (2) denied her the contractual right to withdraw her guilty plea as to the felony charge.

A district court’s refusal to impose a stipulated sentence does not mandate withdrawal of the plea unless (1) the defendant entered a conditional plea based upon the court’s acceptance of the parties’ sentencing recommendation, *see* NRS 174.035(4); or (2) the court expresses an inclination to follow the parties’ sentencing recommendation but subsequently “reconsiders and concludes that a harsher sentence is warranted,” *Cripps v. State*, 122 Nev. 764, 771, 137 P.3d 1187, 1191-92 (2006).

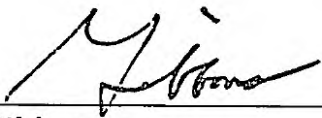
In the guilty plea agreement, the parties jointly recommended that Diaz receive probation with the condition that Diaz complete mental health court or, if not accepted to mental health court, mental health counseling. The State also agreed not to oppose Diaz's attempts to withdraw her guilty plea as to the felony charge if she "successfully complete[d] mental health court and/or probation." The plea agreement was not conditioned on the district court's acceptance of the parties' sentencing recommendation, and the district court did not express an inclination to follow the parties' recommendation. Thus, the district court did not repudiate the plea agreement by imposing a sentence of 12 to 60 months in prison for felony child abuse or neglect and a concurrent sentence of 364 days in jail for gross misdemeanor child abuse or neglect rather than granting Diaz probation.¹

Likewise, the district court did not deny Diaz a contractual right to withdraw her guilty plea as to the felony charge. Diaz did not receive probation, and nothing in the plea agreement indicates Diaz was entitled to withdraw her guilty plea if she received and completed a prison sentence. Therefore, we conclude the district court did not repudiate the plea agreement when it imposed Diaz's sentence.

¹Diaz cites caselaw for the proposition that a district court abuses its discretion when it imposes a sentence greater than that contemplated by a plea agreement. See, e.g., *Stahl v. State*, 109 Nev. 442, 443-44, 851 P.2d 436, 438 (1993); *Lovie v. State*, 108 Nev. 488, 489, 835 P.2d 20, 21 (1992). We note that these decisions were based on a specific statutory provision which has since been repealed, see 1993 Nev. Stat., ch. 279, § 1, at 828-29, and the supreme court has since indicated that a district court is not bound by the parties' sentencing recommendation, see *Sandy v. Fifth Jud. Dist. Ct.*, 113 Nev. 435, 440 n.1, 935 P.2d 1148, 1151 n.1 (1997).

Diaz also argues that her plea is invalid because she did not understand the consequences of her plea. In particular, Diaz contends that she did not know that she would not be allowed to withdraw her plea as to the felony charge if she received a prison sentence.

Generally, this court will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), *as limited by Smith v. State*, 110 Nev. 1009, 1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). "Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance" *Id.* at 272, 721 P.2d at 368; *see also Smith*, 110 Nev. at 1010-11 n.1, 879 P.2d at 61 n.1 (stating that unless the error clearly appears from the record, a challenge to the validity of a guilty plea must be first raised in the district court in a motion to withdraw guilty plea or postconviction petition for a writ of habeas corpus). Diaz did not previously raise a challenge to the validity of her guilty plea in the district court, and the alleged errors do not clearly appear in the record. Therefore, we decline to consider this claim on appeal. Accordingly, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Kenneth A. Stover
Washoe County District Attorney
Attorney General/Carson City
Washoe District Court Clerk