IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUANE ANDREW BALL, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 88319-COA
DUANE ANDREW BALL, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 88320-COA

ORDER OF AFFIRMANCE

Duane Andrew Ball appeals from a judgment of conviction, entered pursuant to a guilty plea in district court case no. CR20-3025, of attempted abuse or neglect of a child involving sexual exploitation (Docket No. 88320), and a judgment of conviction, entered pursuant to a guilty plea in district court case no. CR23-1342, of pandering constituting domestic violence (Docket No. 88319). Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Ball argues the district court did not have jurisdiction to enter a judgment of conviction for attempted child abuse involving sexual exploitation. First, he argues that the crime required an actual child victim and there was no child victim in his case. Second, he argues that the State improperly charged him with both attempted child abuse involving sexual exploitation and soliciting a child for prostitution and that the attempted-

child-abuse charge violated the separate of powers doctrine because it was "an impermissible judicial excursion into the Legislature's domain."

Ball acknowledges that a guilty plea generally waives any right to appeal from events occurring prior to the entry of the plea. *Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) ("[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (alteration in the original)). However, relying on *Class v. United States*, he argues his claims should not be considered waived because his claims implicate the "government's power to constitutionally prosecute him." 583 U.S 174, 181-82 (2018) (internal quotation marks omitted) (concluding that appellate claims challenging the government's power to criminalize a defendant's admitted conduct and thereby challenging the power to prosecute a defendant are not waived by a guilty plea).

As to Ball's claim that the crime of attempted child abuse involving sexual exploitation required an actual child victim, that claim appears within the bounds of *Class* as it calls into question the State's power to criminalize him for his admitted conduct. However, the Nevada Supreme Court recently held that attempted child abuse involving sexual exploitation does not require an actual child victim. *See Martinez v. State*, 140 Nev., Adv. Op. 70, 558 P.3d 346, 357 (2024). Thus, we conclude that Ball is not entitled to relief on this claim.

As to Ball's claim that the State violated the separation of powers doctrine by charging him with both soliciting a child for prostitution and attempted child abuse involving sexual exploitation, we are not convinced that claim falls within the bounds of *Class*. Ball was not convicted of both charges—he negotiated a plea to only one charge—and his claim does not question the power to criminalize him for his admitted conduct on the one charge to which he pleaded guilty. Thus, this claim appears waived by the entry of Ball's guilty plea.

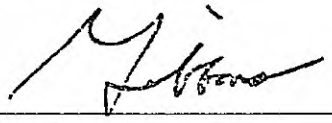
But even assuming this claim was not waived, Ball fails to demonstrate that the State violated the separation of powers doctrine by charging him with both counts. First, he does not demonstrate the State "exercise[d] any functions, appertaining to" the legislative or the judicial departments when it charged Ball with both counts. Nev. Const. art. 3, § 1(1); *see Nev. Pol'y Rsch. Inst., Inc. v. Miller*, 140 Nev., Adv. Op. 69, 558 P.3d 319, 326 (2024) (explaining the general powers in the legislative, judicial, and executive departments). Second, as to the propriety of the State's charging document, Ball concedes the charges do not violate the Double Jeopardy Clause because the elements for each crime are different. *See Jackson v. State*, 128 Nev. 598, 604, 291 P.3d 1274, 1278 (2012); *see also* NRS 193.153(1) (former NRS 193.330, defining attempt); NRS 200.508(1)(b)(1) (defining child abuse); 2019 Nev. Stat., ch. 545, § 5, at 3365 (former version of NRS 201.354, defining soliciting a child for prostitution); NRS 432B.110(1) (defining sexual exploitation). Third, the Nevada Supreme Court recently stated that "the attempted-child-abuse charge [is

not] an impermissible excursion into the Legislature's domain."[1] *Martinez*, 140 Nev., Adv Op. 70, 558 P.3d at 357. Thus, we conclude that Ball is not entitled to relief on this claim.

Finally, Ball argues that the district court did not have jurisdiction to enter a judgment of conviction for pandering constituting domestic violence because the criminal information and facts alleged in the presentence investigation report do not support the charge. This claim was waived and does not fall within the bounds of *Class* because it "contradict[s] the admissions necessarily made upon entry of a voluntary plea of guilty." *Class*, 583 U.S at 183; *see also Webb*, 91 Nev. at 470, 538 P.2d at 165. Therefore, we decline to consider this claim on appeal. Accordingly, we

ORDER the judgments of conviction AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

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[1]Like in the instant case, Martinez was charged with both soliciting a child for prostitution and attempted child abuse involving sexual exploitation. Ball acknowledges he is making the same argument as was made in *Martinez*.

cc: Hon. Egan K. Walker, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk