

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT OLIVER FOWLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39496

FILED

AUG 23 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of home invasion. The district court sentenced appellant Robert Oliver Fowler to serve a prison term of 16 to 72 months.

Fowler's sole contention on appeal is that the district court abused its discretion in ruling Fowler was ineligible to elect treatment pursuant to NRS 458.300(1). Specifically, Fowler argues that he was eligible to elect treatment because he was not convicted of domestic violence and, therefore, did not commit a crime constituting domestic violence as defined in NRS 33.018. We disagree.


NRS 458.300(1) provides that individuals who have committed "an act which constitutes domestic violence as set forth in NRS 33.018" are ineligible to request a drug treatment program in lieu of a prison term. NRS 33.018 broadly defines "domestic violence" to include numerous enumerated acts committed upon a former spouse or girlfriend, including the "[u]nlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry."¹

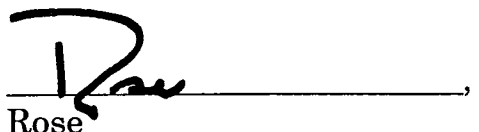
¹NRS 33.018(1)(g).

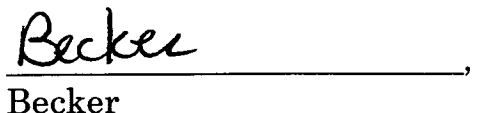
In the instant case, Fowler pleaded guilty to home invasion as charged in the information. Particularly, Fowler admitted that, on November 13, 2001, he violently smashed through the sliding door of the residence of Jena Lawry, Fowler's former girlfriend. Fowler conceded that he had at least one weapon in his possession at the time of the crime, and that he was grossly intoxicated. Because Fowler pleaded guilty to the unlawful entry of the home of his former girlfriend under circumstances where there was a reasonable risk of harm, we conclude that Fowler committed an act of domestic violence as defined in NRS 33.018. Accordingly, the district court did not err in ruling that Fowler was ineligible for election of treatment in lieu of a prison term.²

Having considered Fowler's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

²See NRS 458.300(1).

cc: Hon. Michael P. Gibbons, District Judge
William B. Cole, Jr.
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk