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## State v. Smith, 131 Nev. Adv. Op. 63 (Sept. 3, 2015)

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CRIMINAL LAW: INVOLUNTARY PLEA

**Summary**

Defendant Terrance Reed Smith entered a no contest plea to one count of child abuse resulting in substantial bodily harm. The Supreme Court of Nevada held Smith’s plea was involuntary because the plea was made in response to acts of coercion by the Washoe County Department of Social Services (“DDS”).

**Background**

Smith was alleged to have committed an act of child abuse upon his infant daughter. DDS sought and obtained custody of Smith’s daughter and placed her in foster care. DDS indicated it would consent to returning physical and legal custody of Smith’s daughter to his wife, on the condition that he was incarcerated on child abuse charges. Smith subsequently entered a no contest plea to one count of child abuse resulting in substantial bodily harm and was sentenced to prison. As agreed, after Smith was sentenced to prison, DDS returned legal and physical custody of the infant to Smith’s wife. Smith filed a post-conviction petition for a writ of habeas corpus alleging he should be allowed to withdraw his plea as it was coerced and involuntary. The district court granted the petition and the State of Nevada (“the State”) appealed.

**Discussion**

On appeal, the State first contended the district court ignored important facts pertaining to Smith’s behavior and compliance with DSS. The Court held that the identifying and weighing of facts is a province of the district court<sup>2</sup> and there is nothing in the record to suggest the district court ignored the evidence presented to it.

The State further argued the plea was not coerced because it was motivated by a desire to avoid a more serious consequence. The Court dismissed this argument finding Smith did not enter the plea to avoid a greater charge and the plea was motivated by the unique circumstances of DDS’s position on the family court case.

Lastly, citing *Iaea*<sup>3</sup>, the State argued nothing about DSS’s actions were unconstitutional, and constitutional, lawful actions of an agency cannot amount to coercion. The Court, relying upon *Iaea*, found that the voluntariness of a plea in the context of coercion is based on the totality of the circumstances. The Court explained the concern is not solely about the subjective state of mind of the defendant, but also the “constitutional acceptability of the external forces inducing the guilty plea.”<sup>4</sup> Finding that external forces induced the plea does not relate to the constitutionality of the external forces in isolation, but instead relates to whether the external

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<sup>1</sup> By Jessie Vargas.

<sup>2</sup> *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 634, 367–98 (1986).

<sup>3</sup> *Iaea v. Sunn*, 800 F.2d 861 (9th Cir. 1986).

<sup>4</sup> *Id.* at 866.

forces deprived the plea of voluntariness. In finding the incarceration condition coercive, the Court determined *Iaea* suggests that agency actions that may be lawful and constitutional, can nevertheless be unduly coercive.

### **Conclusion**

Even legal and constitutional actions, if unduly coercive, render a plea involuntary. Thus, the district court's finding that Smith's incarceration condition proposed by DSS was unduly coercive was not an abuse of discretion.