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Summary of State v. Lewis, 124 Nev. Adv. Op. No. 13

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***State v. Lewis*, 124 Nev. Adv. Op. No. 13 (March 13, 2008)¹**

CRIMINAL LAW AND PROCEDURE – APPEALS

Summary

State appealed a district court order granting Defendant’s presentence motion to withdraw his guilty plea. The Nevada Supreme Court granted certiorari to determine whether granting a presentence motion to withdraw a guilty plea is independently appealable.

Disposition/Outcome

The Nevada Supreme Court granted Lewis’s motion to dismiss on the basis that the Court lacked jurisdiction over the appeal. The Court held that an order granting a presentence motion to withdraw a guilty plea is an intermediate order and cannot be independently appealed. There is no statute or rule allowing the State to appeal from an intermediate order granting the defendant the right to withdraw a guilty plea before sentencing.

Facts and Procedural History

Lewis was charged with several counts of sexual assault and lewdness with a minor. Lewis entered into a plea agreement stating he was eligible for probation if, after evaluation, it was determined that he did not have a high risk of reoffending. Lewis then made a motion to withdraw his guilty plea before sentencing, arguing that his plea was unknowing because the probation terms were misrepresented to him. The district court granted Defendant’s motion to withdraw.

The State appealed and Lewis filed a motion to dismiss, claiming that the order was intermediate and therefore not a final, appealable determination.

Discussion

The Nevada Supreme Court derives its appellate jurisdiction from statutes or court rules.² Thus, if no statute or court rule provides for a certain appeal, then the right to appeal does not exist.³

NRS 177.015 is the primary criminal appeals statute and does not provide the Court jurisdiction to review an order granting a motion to withdraw a guilty plea. District court orders that may be reviewed under NRS 177.015(1)(b) include: grants of motions to dismiss, motions of acquittal, motions in arrest or judgment, or grants or refusals of new trials.

¹ By Holly Ludwig.

² *Castillo v. State*, 106 Nev. 349, 352-53, 792 P.2d 1133, 1135 (1990).

³ *Id.*

The State argued that an order granting a presentence motion to withdraw a guilty plea is the functional equivalent of an order granting a motion for a new trial and is therefore appealable under NRS 177.015(1)(b).⁴ In *Hargrove*, the court allowed its jurisdiction to consider an appeal from a district court order denying a *post-conviction* motion to withdraw a guilty plea.⁵ A post-conviction motion to withdraw a guilty plea is substantially similar to a motion for a new trial because both motions are made after conviction and challenge the basis of the finding of guilt.⁶ Moreover, an order denying a motion to withdraw a guilty plea before the judgment is entered can be reviewed on direct appeal from the conviction as an intermediate order.⁷

The Court rejects the State's argument, finding that an order granting a presentence motion to withdraw a guilty plea is not analogous to an appealable order granting a motion for a new trial. Only orders granting or denying *post-judgment* motions for a new trial are appealable.⁸ The Court holds that it only has jurisdiction to hear appeals of district court orders resolving post-conviction motions for a new trial or its functional equivalents.⁹ Any order entered before the conviction is intermediate and therefore not a final, appealable issue. This holding is grounded in policies of promoting judicial economy and avoiding piecemeal appellate review.¹⁰ This rule does not unduly prejudice the State because it is free to enter into a new plea bargain if such an order is granted or it may proceed to trial. Additionally, if the trial court exceeds its judicial discretion in allowing a defendant to withdraw his plea before sentencing, the State has the option of filing a petition for extraordinary relief in the Nevada Supreme Court.

Conclusion

The Nevada Supreme Court lacks the requisite jurisdiction to hear this matter because the State's appeal from an order granting a presentence motion to withdraw a guilty plea is an intermediate order. Therefore, Defendant's motion to dismiss is granted.

⁴ *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).

⁵ *Id.* at 502, 686 P.2d at 225.

⁶ *Id.* at 501, 686 P.2d at 224.

⁷ *Id.* at 502 n.3, 686 P.2d at 225 n.3; *see also* *Molina v. State*, 120 Nev. 185, 191 n.15, 87 P.3d 533, 537 n.15 (2004); *Lee v. State*, 115 Nev. 207, 210, 985 P.2d 164, 166 (1999).

⁸ *Reno Hilton Resort Corp. v. Verderber*, 121 Nev. 1, 203, 106 P.3d 134, 135 (2005)

⁹ *Id.*

¹⁰ *See Id.*