

ASSEMBLY BILL NO. 262—ASSEMBLYMAN OHRENSCHALL

MARCH 11, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning the withdrawal of certain pleas. (BDR 3-124)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; revising provisions concerning the withdrawal of certain pleas after sentence is imposed or imposition of sentence is suspended; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a person convicted of a crime and under sentence of death or imprisonment may file a petition for a writ of habeas corpus to challenge the conviction or sentence as having been obtained or imposed in violation of state law or a constitutional right. Existing law provides that, with the exception of a direct appeal or a remedy which is incident to the proceedings in the trial court, the petition for a writ of habeas corpus replaces all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence and must be used exclusively in place of them. (NRS 34.724) Existing law also authorizes a criminal defendant to withdraw a plea of guilty, guilty but mentally ill or nolo contendere at any time before sentencing, and also permits the withdrawal of such a plea after sentencing, but only to correct a manifest injustice. (NRS 176.165)

In 2000, the Nevada Supreme Court held that a postconviction motion to withdraw a guilty plea to correct a manifest injustice was a remedy incident to the proceedings in the trial court. Accordingly, the motion had not been replaced by the petition for a writ of habeas corpus and was not subject to the various procedural requirements that govern such petitions. (*Hart v. State*, 116 Nev. 558 (2000)) The Nevada Supreme Court recently overruled *Hart*. The Court held that a postconviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of a guilty plea made after sentencing for persons in custody on the conviction being challenged and overruled *Hart* to the extent that it concluded otherwise. (*Harris v. State*, 130 Nev. Adv. Op. 47, 329 P.3d 619 (2014))

This bill expressly provides that a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere pursuant to NRS 176.165 that is made after



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25 sentence is imposed or imposition of sentence is suspended is a remedy which is
26 incident to the proceedings in the trial court.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 34.724 is hereby amended to read as follows:
2 34.724 1. Any person convicted of a crime and under
3 sentence of death or imprisonment who claims that the conviction
4 was obtained, or that the sentence was imposed, in violation of the
5 Constitution of the United States or the Constitution or laws of this
6 State, or who claims that the time the person has served pursuant to
7 the judgment of conviction has been improperly computed, may,
8 without paying a filing fee, file a postconviction petition for a writ
9 of habeas corpus to obtain relief from the conviction or sentence or
10 to challenge the computation of time that the person has served.
11 2. Such a petition:
12 (a) Is not a substitute for and does not affect any remedies which
13 are incident to the proceedings in the trial court or the remedy of
14 direct review of the sentence or conviction.
15 (b) Comprehends and takes the place of all other common-law,
16 statutory or other remedies which have been available for
17 challenging the validity of the conviction or sentence, and must be
18 used exclusively in place of them.
19 (c) Is the only remedy available to an incarcerated person to
20 challenge the computation of time that the person has served
21 pursuant to a judgment of conviction.
22 **3. *For the purposes of this section, a motion to withdraw a***
23 ***plea of guilty, guilty but mentally ill or nolo contendere pursuant***
24 ***to NRS 176.165 that is made after sentence is imposed or***
25 ***imposition of sentence is suspended is a remedy which is incident***
26 ***to the proceedings in the trial court.***
27 **Sec. 2.** This act applies to any motion to withdraw a plea of
28 guilty, guilty but mentally ill or nolo contendere pursuant to NRS
29 176.165 that is made after sentence is imposed or imposition of
30 sentence is suspended that is pending on or after June 12, 2014.

