

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYATT DALE ERICKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44285

FILED

JUN 16 2005

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 nolo contendere plea, of battery with the intent to kill (count I) and possession of a dangerous weapon by a prisoner (count II). Third Judicial District Court, Lyon County; Archie E. Blake, Judge. The district court sentenced appellant Ryatt Dale Erickson to serve a prison term of 48 to 200 months for count I and a consecutive prison term of 12 to 36 months for count II.

Erickson contends that the district court abused its discretion in denying his proper person presentence motion to withdraw the guilty plea because the record does not indicate that his guilty plea was voluntary and intelligent. In particular, Erickson contends that the record does not show that he had a clear understanding of his constitutional rights or the nature of the charges because: (1) he never made a factual admission that he committed the charged offenses; (2) he was "concerned regarding the effects the drugs [he was taking] may have as to his mental state at the time the offense occurred"; and (3) before sentencing, his

counsel requested a continuance to allow Erickson to consult with independent counsel. We conclude that Erickson's contentions lack merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.¹ A defendant has no right, however, to withdraw his plea merely because he moved to do so prior to sentencing or because the State failed to establish actual prejudice.² Rather, in order to show that the district court abused its discretion in denying a motion to withdraw a guilty plea, a defendant must prove that the totality of the circumstances indicates that the plea was not entered knowingly, voluntarily and intelligently.³ "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"⁴

In this case, the totality of the circumstances indicates that Erickson entered a knowing, voluntary and intelligent nolo contendere plea. Erickson signed a written plea agreement and was thoroughly

¹State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

²Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

³Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

⁴Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

canvassed by the district court. At the plea canvass, Erickson admitted that, while in lawful custody at the Lyon County Jail, he grabbed a deputy and threatened to kill him with a long bolt, which was capable of being used as a weapon. Although Erickson explained that he was not trying to kill the deputy, the prosecutor established a factual basis for the nolo contendere plea, stating that the evidence would show that Erickson repeatedly attempted to stab the deputy with the shank, while threatening to kill him, and the attack on the deputy did not stop until he was pepper-sprayed and restrained by another deputy. In entering his plea, Erickson acknowledged that the State had substantial evidence that would likely lead to his conviction and that he was pleading guilty to avoid being convicted at trial of additional criminal charges.⁵

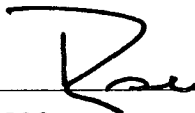
Prior to sentencing, the district court heard argument on Erickson's motion to withdraw the guilty plea and for alternate counsel and denied the motion. We conclude that the district court did not abuse its discretion in so doing. As previously discussed, Erickson's plea was knowing, voluntary and intelligent, and Erickson failed to allege adequate cause necessary in support of his request for a change of counsel.⁶

⁵See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706-07 (1996) (nolo contendere plea valid where prosecutor established adequate factual basis for the plea and defendant explained he was pleading guilty to avoid being convicted of additional criminal charges).


⁶See generally Thomas v. State, 94 Nev. 605, 607-08, 584 P.2d 674, 676 (1978) (discussing adequate cause necessary for change of counsel).

Having considered Erickson's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Archie E. Blake, District Judge
Law Office of Kenneth V. Ward
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk