

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARIO QUILICI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45716

FILED

FEB 09 2006

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, entered pursuant to a plea of no contest, of one count of making a false statement to obtain a license, tag, or permit.¹ Third Judicial District Court, Churchill County; Archie E. Blake, Judge. The district court sentenced appellant Dario Quilici to pay a \$2,000 fine and ordered him to comply with the conditions of his plea agreement.

While represented by attorney Ken McKenna, both Quilici and his father, Bradley Quilici, waived their preliminary hearings and entered pleas of no contest. During the district court's plea canvass, Quilici adopted McKenna's factual basis for the charge as his own:

Your Honor, the Information that we have is that the licenses were requested at a time when Dario Quilici was residing in Utah, and there was some elements of the case that demonstrated he had applied for and obtained Utah residency at the same time his father on his behalf applied for a Nevada tag.

¹See NRS 502.060(3) ("Any person who makes any false statement or furnishes false information to obtain any big game tag issued pursuant to the provisions of this title is guilty of a gross misdemeanor.").

Certainly the matter could have been contested. There were felonies and other charges involved in multiple Counties, and so I think the facts could certainly substantiate the crime and it's in their best interests to plead no contest and put this matter behind them.

The district court accepted Quilici's plea and set a date for sentencing. However, prior to sentencing, Quilici substituted James Sloan as counsel of record and filed a motion to withdraw his plea of no contest.

On appeal, Quilici contends that the district court erred by denying his presentence motion to withdraw his plea. An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.² In reviewing the district court's determination, we 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.³

Quilici contends that the district court should have allowed him to withdraw his plea because attorney McKenna had a conflict of interest -- he represented both Quilici and Bradley Quilici in this matter. Quilici contends that he became aware of the conflict after he entered the plea, he did not give written consent to waive the conflict, and he was unable to provide a viable defense as a result of the conflict.

²NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225, n.3 (1984)).

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

To show a Sixth Amendment violation of his right to counsel, Quilici must demonstrate both an actual conflict and an adverse effect on his attorney's performance.⁴ "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties."⁵

Here, Quilici fails to identify how any defense he might have would conflict with defenses available to his father in this matter. The district court heard testimony and argument on this issue and was unable to find a conflict or identify any prejudice that may have accrued to either defendant as a result of the joint representation. Our review of the record also fails to reveal an actual conflict of interest. Accordingly, we conclude that the district court did not abuse its discretion.⁶

Quilici further contends that the district court erred in denying his motion to withdraw his plea because there was substantial evidence to support his innocence. "A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for and 'substantial reason' if it is 'fair and just.'"⁷

⁴Cuyler v. Sullivan, 466 U.S. 335, 348 (1980); see also Burger v. Kemp, 483 U.S. 776, 783 (1987) (providing that prejudice is presumed "only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance" (citation omitted, emphasis added)).

⁵Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)).

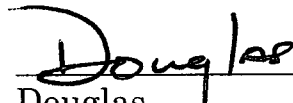
⁶We note that a client's waiver of a potential conflict arising from joint representation need not be in writing. See SCR 158(7).


⁷Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

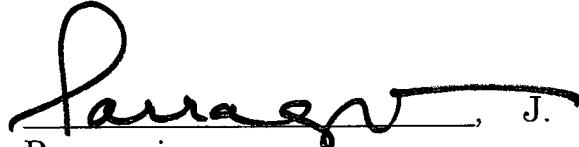
Here, the district court found that Quilici entered his plea of no contest because there was evidence that he was a Utah resident at the time his father applied for a Nevada resident big game tag on his behalf. By entering the plea, Quilici avoided prosecution for related felonies, gross misdemeanors, and misdemeanors arising in several Nevada counties. Given the lapse of time between the crime, arraignment, and plea agreement, the State would be prejudiced if the plea were withdrawn. And, given the circumstances of this case, it was neither prejudicial nor unfair to deny Quilici's motion to withdraw his plea. The record supports the district court's findings. Accordingly, we conclude that the district court did not abuse its discretion.

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

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Archie E. Blake, District Judge
James F. Sloan
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk