

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL ADAM CHIRCHICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54714

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a “motion to set aside judgment of conviction and illegal acceptance of guilty plea.”¹ Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

In his motion filed on June 1, 2009, appellant challenged the validity of the guilty plea.² A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Because of the nature of the relief sought, we conclude that the motion is properly construed as a motion to withdraw the guilty plea.

First, appellant claimed that his plea was invalid because he never admitted to the intent element and the State failed to provide an adequate factual basis regarding the intent/misrepresentation element. Appellant failed to carry his burden in this regard. Appellant entered an Alford plea³ and did not admit the elements. However, the State provided a factual basis for the plea, which included the intent/misrepresentation element, and appellant entered the plea after listening to the State's presentation of evidence. See Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982). Appellant affirmatively indicated that he was entering his plea, after hearing the State's presentation, to avoid a more harsh and severe penalty. See id. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that the plea canvass was inadequate regarding the elements and the waiver of constitutional rights. Appellant failed to carry his burden in this regard. The elements and waiver of constitutional rights were set forth in the plea agreement, and the intent/misrepresentation element was discussed during the plea canvass. Appellant, a college graduate, acknowledged reading, signing and discussing the plea agreement with his counsel. Therefore, we conclude the district court did not err in denying this claim.

Third, appellant suggested that he may not have signed the plea agreement because the district court misstated the date at the plea canvass. The plea agreement is signed by appellant, and appellant acknowledged signing the plea agreement. The misstatement of the date

³North Carolina v. Alford, 400 U.S. 25 (1970).

did not render the plea invalid. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his plea was invalid because he did not understand the civil confession of judgment. Appellant failed to carry his burden in this regard. The plea agreement sets forth that appellant will sign a civil confession of judgment as part of the terms of the plea, and this term of the plea agreement was set forth during the plea canvass. The civil confession of judgment was further discussed by the parties at the plea canvass. After this discussion, appellant indicated that he had no further questions. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that he believed he would receive probation because of comments made at the plea canvass. Appellant failed to carry his burden in this regard. Appellant was informed of the potential sentences and that sentencing was left to the discretion of the district court. No statements were made by the district court that implied appellant would receive probation. Therefore, we conclude that the district court did not err in denying this claim.

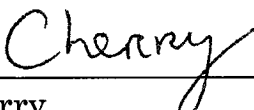
Sixth, appellant claimed that his plea was invalid because trial counsel took the State's position when it explained the plea negotiations, agreed with the State on most issues, told him to say yes to the intent element, and allowed him to enter an Alford plea to overcome his hesitation on the intent element. Appellant failed to carry his burden in this regard. None of these claims demonstrate that the plea was invalid due to the ineffective assistance of counsel. Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); Hill v. Lockhart, 474 U.S. 52


(1985). Therefore, we conclude that the district court did not err in denying this claim.


Seventh, appellant claimed that his plea was coerced for the reasons set forth above. Appellant failed to demonstrate that he was coerced. Appellant affirmatively indicated that he entered his plea voluntarily and that his plea was not the product of duress or coercion. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that the sentence was unreasonable because he did not admit to the intent element. Appellant may not challenge his sentence in a motion to withdraw the guilty plea. See Hart v. State, 116 Nev. 558, 564, 1 P.3d 969, 973 (2000) (“Only issues relating to the validity of the plea are pertinent to [a] motion [to withdraw the plea].”). This claim further fell outside the scope of a motion to correct an illegal sentence or a motion to modify a sentence. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 7, District Judge
Mitchell Adam Chirchick
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk