

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD D. BUNCH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55016

**FILED**

SEP 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of lewdness with a minor under 14 and luring a child. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. Appellant Richard Bunch raises four claims of error in the district court's denial of his motion to withdraw his guilty plea.

A guilty plea is presumptively valid, particularly when entered upon the advice of counsel, and the defendant bears the burden of establishing that the plea was not entered knowingly, intelligently, and voluntarily. Medina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). We review the district court's determination on such a motion for a clear abuse of discretion. See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

First, Bunch claims that the district court erred in denying the motion because he asserted actual innocence. Not only is such an unsupported assertion collateral to deciding a motion to withdraw a plea, Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984), but Bunch admitted at his plea canvass that "[he] had unlawful sexual contact with a

minor.” Accordingly, we conclude that the district court did not abuse its discretion in denying the motion on that basis.

Second, Bunch claims that the district court erred in denying the motion because he was coerced by his attorney into pleading guilty. Counsel testified that he consistently advised Bunch to accept a favorable plea bargain in light of Bunch’s incriminating statements to detectives, but that he also reminded Bunch that the decision was ultimately his. In addition, Bunch initially rejected the deal and pleaded not guilty against counsel’s advice, belying Bunch’s contention that counsel exercised coercive influence. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion on that basis.

Third, Bunch argues that he did not knowingly and intelligently plead guilty because discovery was not completed before counsel advised him to plead and because counsel did not understand the consequences of waiving the preliminary examination. These arguments are belied by the record and without merit. To the contrary, counsel testified that (1) all discovery was completed before Bunch’s arraignment, except for a set of phone call transcripts which counsel asserted were not material to Bunch’s defense, not in the State’s possession and could be obtained before trial; and (2) the waiver of preliminary examination, which was conditioned upon completion of discovery, was the first step in plea negotiations. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion on that basis.

Fourth, Bunch complains that the State committed prosecutorial misconduct in failing to produce discovery. As stated above, Bunch’s counsel testified that material discovery was complete before the arraignment where Bunch pleaded not guilty. Counsel also testified that

he discussed the evidence provided and possible defenses and was preparing for trial until Bunch asked him if the State would be willing to re-open plea negotiations. Accordingly, we conclude that there was no misconduct and that the district court did not abuse its discretion in denying the motion on that basis.

Having considered Bunch's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Patrick Flanagan, District Judge  
Merchant Law Firm, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk