

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEVELAND L. ROBINSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58624

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

First, appellant Cleveland L. Robinson, Jr., contends that the district court erred by summarily denying his proper person oral motion to withdraw his guilty plea made immediately following the imposition of his sentence. Robinson claims that his oral motion should be treated as a presentence motion to withdraw because it was made prior to the signing and filing of the judgment of conviction. See NRS 176.165; NRS 176.105(3). Robinson was represented by counsel and at no point prior to the imposition of the sentence did he express dissatisfaction with his plea. Further, Robinson offered no reason for wanting to withdraw his plea. Regardless of whether Robinson's oral motion is treated as a presentence or post-conviction motion to withdraw, he fails to demonstrate that the district court abused its discretion. See Johnson v. State, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007) ("This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion."); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537

(2004) (defendant bears the burden of proving that plea is invalid). Therefore, we conclude that Robinson is not entitled to relief.

Second, Robinson contends that the district court abused its discretion at sentencing by following the State's recommendation and imposing a prison term rather than probation. Robinson has not alleged that the district court relied solely on palpable or highly suspect evidence or that the sentencing statute is unconstitutional. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). Further, the granting of probation is discretionary, see 176A.100(1)(c), and Robinson's sentence falls within the parameters provided by the relevant statute, see NRS 205.060(2). To the extent that Robinson claims that the district court failed to exercise its discretion by following the State's recommendation and imposing a prison term, we disagree. We conclude that the district court did not abuse its discretion at sentencing, see Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000), and we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Second Judicial District Court Dept. 9, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk