

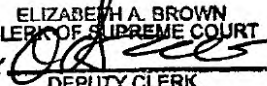
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER MITCHEL BOONE,
Appellant,
vs.
BRIAN WILLIAMS,
Respondent.

CHRISTOPHER MITCHEL BOONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

✓ No. 86871-COA
FILED

MAR 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 86910-COA

ORDER OF AFFIRMANCE

Christopher Mitchel Boone appeals from orders of the district courts denying postsentence motions to withdraw guilty plea filed in district court case no. C-17-323158-2 (Docket No. 86871) and district court case no. C-17-323163-1 (Docket No. 86910). Eighth Judicial District Court, Clark County; Carli Lynn Kierny and Tierra Danielle Jones, Judges.

Boone argues the district courts erred by denying his postsentence motions to withdraw his guilty plea. In both motions, Boone contended that he was entitled to withdraw his guilty plea pursuant to the relevant plea agreement because he successfully completed probation with an honorable discharge.

As a general matter, a defendant seeking to withdraw their guilty plea after sentencing may not file a postsentence motion to withdraw their plea but must instead file a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014); *see*

also NRS 34.724(2)(a)-(b). However, a defendant may file a postsentence motion to withdraw a guilty plea if certain requirements are met. See NRS 34.724(3). Boone does not contend that he satisfies these requirements, and the district courts did not appear to consider whether Boone satisfied these requirements in denying the motions.¹ Nonetheless, even if Boone's motions satisfied the requirements of NRS 34.724(3), we conclude that they lack merit.

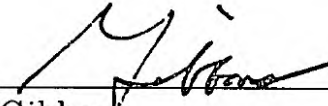
A district court may set aside a judgment of conviction and permit a defendant to withdraw their plea after sentencing to correct a manifest injustice. NRS 176.165. We review a district court's decision to deny a postsentence motion to withdraw a guilty plea for an abuse of discretion. See *Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).


Both guilty plea agreements contained a drop-down provision that permitted Boone to withdraw his plea and plead guilty to petit larceny if he successfully completed probation and received an honorable discharge. Immediately thereafter, both plea agreements also state, "However, I agree and understand that I am ineligible for the reduction in my sentence if one or more of the following events occur: . . . 5. I have been found by the Court to be in violation of probation, regardless of whether I am revoked or not."

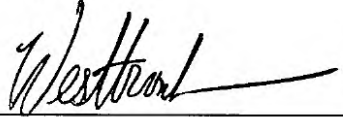
¹We note that the district court in each case properly declined to construe Boone's motion as a postconviction habeas petition because Boone was not in custody when he filed the relevant motion. See Nev. Const. art. 6, § 6 (setting forth the custodial requirement for the district court's original jurisdiction over a writ of habeas corpus); NRS 34.724(1) (providing that a petition may be filed by a person "under sentence of . . . imprisonment"); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999) (holding that "a district court may not issue a writ of habeas corpus if the post-conviction petitioner filed the petition challenging the validity of a conviction after having completed the sentence for the challenged conviction").

Boone later stipulated to being in violation of his probation in both cases, and both courts entered a second amended judgment of conviction that reinstated probation with additional conditions. Moreover, we reject Boone's contention that the amended judgments constituted new agreements that extended anew his opportunity to exercise the drop-down provision. The amended judgments did not alter the terms of the guilty plea agreements; rather, they simply set forth the additional conditions imposed as a result of the probation violations. Therefore, Boone failed to demonstrate that withdrawal of his guilty pleas was necessary to correct a manifest injustice, and we conclude the district courts did not abuse their discretion by denying Boone's postsentence motions to withdraw his pleas. Accordingly, we

ORDER the judgments of the district courts AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Hon. Tierra Danielle Jones, District Judge
Christopher Mitchel Boone
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk