

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARYL GRAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43064

FILED

OCT 27 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Roberts*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Daryl Gray's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On March 10, 2003, the district court convicted Gray, pursuant to a guilty plea, of battery with the use of a deadly weapon resulting in substantial bodily harm. The district court sentenced Gray to serve a term of 48 to 120 months in the Nevada State Prison. Gray did not file a direct appeal.

On February 19, 2004, Gray filed a proper person motion to withdraw his guilty plea. The State opposed the motion. The district court declined to appoint counsel to represent Gray or to conduct an evidentiary hearing. On May 21, 2004, the district court denied Gray's motion. This appeal followed.

After the imposition of a sentence, the district court will allow the withdrawal of a guilty plea only to correct a manifest injustice.<sup>1</sup> A guilty plea is presumptively valid, and a defendant carries the burden of

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<sup>1</sup>NRS 176.165.

establishing that his plea was not entered knowingly and intelligently.<sup>2</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>3</sup> We will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>4</sup>

Gray contended that his guilty plea was unknowingly entered because he was misinformed about the sentence he would receive. In his petition, Gray set forth several alternative interpretations of the sentence he believed he would receive pursuant to the plea agreement. Specifically, Gray argued that his counsel informed him that: (1) he would receive a minimum sentence of two years; (2) he would receive probation; or (3) he would receive house arrest and after completing various classes, he would be granted probation.

We conclude that the district court did not err in denying Gray's motion. The written guilty plea agreement—which Gray acknowledged having read, understood, and signed—provided that Gray would be sentenced to a minimum term of not less than two years and a maximum term of not more than ten years. Further, the written plea agreement stated that although Gray was eligible for probation for the offense, "the question of whether [he will] receive probation is in the discretion of the sentencing judge." Finally, during the oral plea canvass, Gray answered affirmatively when asked whether he understood that the

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<sup>2</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).


<sup>3</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.


<sup>4</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

district court could sentence him to a term of up to ten years. Therefore, Gray failed to demonstrate that, under the totality of the circumstances, his guilty plea was unknowingly entered.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gray is not entitled to relief and that briefing and oral argument are unwarranted.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael A. Cherry, District Judge  
Daryl Gray  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have reviewed all documents that Gray has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.