

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JAMES BETTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43088

FILED

DEC 29 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of grand larceny of a motor vehicle and grand larceny. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Michael James Betts to serve two concurrent prison terms of 24 to 60 months.

Betts contends that the district court erred in denying his presentence motion to withdraw his guilty plea. Particularly, Betts argues that the district court should have allowed him to withdraw his guilty plea given that: (1) he articulated a legitimate defense; (2) he never admitted guilt to the alleged crimes; (3) the State failed to show that the alleged victim owned the car; and (4) his sole reason for entering a guilty plea was to avoid the habitual criminal statute. Moreover, relying on McDonald v. Sheriff,¹ Betts contends that a manifest injustice will occur if he is not allowed to withdraw his guilty plea "because the requisite mens rea of the crime was never present." We conclude that Betts' contentions lack merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a

¹89 Nev. 326, 327 & n.1, 512 P.2d 774, 775 & n.1 (1973).

motion in its discretion for any substantial reason that is fair and just.² The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum."³ A defendant has no right, however, to withdraw his plea merely because he moved to do so prior to sentencing or because the State failed to establish actual prejudice.⁴ Rather, in order to show that the district court abused its discretion in denying a motion to withdraw a guilty plea, a defendant has the burden of showing that the plea was not entered knowingly, voluntarily and intelligently.⁵ "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"⁶

In this case, the totality of the circumstances indicates that Betts entered a knowing, voluntary and intelligent plea. Betts signed a written plea agreement and was thoroughly canvassed by the district court. Although at the plea canvass Betts insisted that he owned the property taken, Betts admitted that there was sufficient evidence to convict him and explained that he was pleading guilty to avoid the threat

²See State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

³Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁴Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁵Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).


⁶Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).


of habitual criminal adjudication. The fact that Betts pleaded guilty to the charged offenses to avoid the threat of habitual criminal adjudication does not render his plea coercive or invalid.⁷ Likewise, the fact that, in pleading guilty, Betts claimed that he owned the property at issue does invalidate his guilty plea because there was an adequate factual basis in support of the conviction.⁸ Accordingly, the district court did not abuse its discretion in denying the motion to withdraw the guilty plea.

Having considered Betts' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Jack A. Alian
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225-26 (1984).

⁸See State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996) (recognizing that whenever a defendant maintains his innocence when entering the plea, the plea constitutes a valid nolo contendere plea).