

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO HARGRAVES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43360

FILED

NOV 17 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On July 14, 2003, appellant Michael Angelo Hargraves was convicted, pursuant to a guilty plea, of one count each of burglary and forgery.¹ The district court sentenced Hargraves to serve a prison term of 48 to 120 months for the burglary count and a concurrent prison term of 12 to 36 months for the forgery count.

On February 20, 2004, Hargraves filed a motion to withdraw the guilty plea. The State opposed the motion. After hearing argument from counsel, the district court denied the motion.

Hargraves contends that the district court erred in denying his motion to withdraw his guilty plea because the guilty plea was not knowing and intelligent. Specifically, Hargraves contends that he "failed to understand the penalty range he would face at sentencing" and pleaded

¹In exchange for Hargraves' guilty plea, the State dropped 7 additional criminal cases pending against him in district court.

guilty based on "the good faith belief that he was facing prison time of no more than two years." We conclude that Hargraves' contention lacks merit.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.² This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³ 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."⁴ In determining the validity of a guilty plea, this court looks to the totality of the facts and circumstances surrounding the plea.⁵

The totality of the circumstances indicates that Hargraves' guilty plea was knowing and voluntary and that he was properly advised with regard to the potential sentence.⁶ Hargraves signed a written plea agreement and was thoroughly canvassed by the district court. At the

²Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also NRS 176.165; Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

³Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

⁴Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁵State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

⁶We note that we reject Hargraves' claim that the district court erred in considering only the plea canvass, rather than the totality of the circumstances. The written plea agreement, which was attached to the State's opposition to Hargraves' motion, was also considered by the district court.

plea canvass, the district court informed Hargraves of the statutory sentencing ranges for the burglary and forgery offenses. In doing so, the district court emphasized that it could impose consecutive and maximum sentences, stating: "The Court could run these sentences consecutive to each other, which means you could do 14 years maximum in the Nevada State Prison for these crimes." Hargraves then acknowledged that he understood the maximum possible sentence. Additionally, the signed plea agreement also set forth the sentencing range for each offense and included an acknowledgement from Hargraves that he had "not been promised or guaranteed any particular sentence by anyone" and was aware that his "sentence was to be determined by the Court within the limits prescribed by statute."

Although Hargraves claims that he pleaded guilty based on the belief that he would only go to prison for two years,⁷ this court has recognized that the "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing."⁸ Accordingly, we conclude that Hargraves' guilty plea was knowing and intelligent, and the district court did not abuse its discretion in denying the motion to withdraw the guilty plea.

⁷In support of his claim, Hargraves notes that, at the sentencing hearing, he stated that he was "ready to go to prison for 19 months, possibly up to 2 years."

⁸State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

Having considered Hargraves' contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Kirk T. Kennedy
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk