

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN DELGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43661

FILED

AUG 18 2005

ORDER OF AFFIRMANCE

JANETTE M. FLOOD
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of robbery with the use of a deadly weapon (count I) and second-degree kidnapping with the use of a deadly weapon (count II). Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant Richard Allen Delgado to serve two consecutive prison terms of 6 to 15 years for count I and two consecutive prison terms of 6 to 15 years for count II, to run concurrently with count I.

Delgado was originally charged with one count each of robbery with the use of a deadly weapon and first-degree kidnapping with the use of a deadly weapon for holding the victim against her will for several days and taking her motor home with the use of a firearm. On the day of trial, Delgado agreed to plead nolo contendere to robbery with the use of a deadly weapon and second-degree kidnapping with the use of a deadly weapon. In exchange for the nolo contendere plea, the State dropped the first-degree kidnapping count, agreed not to seek habitual criminal adjudication, and agreed to make no recommendation at the time of sentencing.

Prior to sentencing, Delgado sent the district court judge a letter requesting that he be allowed to withdraw his plea. The district court appointed alternate counsel to represent Delgado, and new counsel

filed a presentence motion to withdraw. The State opposed the motion. After conducting an evidentiary hearing, the district court denied the motion to withdraw.

Delgado contends that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea. Specifically, Delgado contends that his guilty plea was not knowing and intelligent because he "felt rushed and pressured on the day of trial when he pled guilty," he had an inadequate time to consult with his attorney prior to entry of the plea, and he did not fully understand the elements of the charged crime.¹ Delgado also argues that "[n]o public policy supports binding a defendant to a plea . . . where the defendant made the plea under [a] misconception and where the State has not been prejudiced." We conclude that Delgado's 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 motion in its discretion for any substantial reason that is fair and just.² 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.³ Rather, in order to show that the district court abused its discretion in denying a motion to withdraw a guilty plea, a defendant must prove that the totality of the circumstances indicates that the plea

¹Although Delgado originally alleged several claims of ineffective assistance of counsel in the letter he wrote to the district court, he expressly abandoned those claims at the hearing on the presentence motion to withdraw the guilty plea.

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

³Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

was not entered knowingly, voluntarily and intelligently.⁴ "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.'"⁵

In this case, the district court denied the motion, ruling that under the totality of the circumstances Delgado entered his nolo contendere plea freely and voluntarily. We conclude that the district court did not abuse its discretion in denying the motion. Delgado signed a written plea agreement wherein he stated that he had discussed the elements of the charged offenses with his attorney, understood the nature of the charges, and was signing the agreement voluntarily and not under duress or coercion. At the plea canvass, the district court thoroughly canvassed Delgado on the consequences of the guilty plea. Delgado acknowledged that there was a factual basis for his plea, that he was pleading guilty to avoid a harsher penalty on the original charges, and that pleading guilty was in his best interest.⁶ Despite his nolo contendere plea maintaining his innocence, Delgado also advised the district court at the plea canvass that he "wasn't using my head when I did these crimes."

⁴Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).


⁵Riker 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)).


⁶See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706-07 (1996) (nolo contendere plea valid where prosecutor established adequate factual basis for the plea and defendant explained he was pleading guilty to avoid being convicted of additional criminal charges).

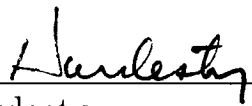
At the hearing on the presentence motion, Delgado testified that he felt coerced into pleading guilty because his attorney told him he would be convicted if he went to trial because Delgado would have to testify⁷ and "with eight felonies on [his] record, [he] was only going to lose." After hearing arguments from counsel, the district court found that Delgado's testimony that his plea was coerced was not credible and belied by the record. Delgado has failed to show that the district court's finding is not supported by substantial evidence or is clearly wrong.⁸ Accordingly, the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁷According to the prosecutor's representations at the plea canvass, both the victim and an eyewitness were scheduled to testify at trial substantiating both the kidnapping and robbery with the use of a deadly weapon charges.

⁸See generally Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

cc: Hon. David Wall, District Judge
Longabaugh Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk