

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERLENE PICKETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44132

**FILED**

AUG 24 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of grand larceny with the assistance of a child. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court adjudicated appellant Verlene Pickett as a habitual criminal and sentenced her to serve a prison term of 5 to 15 years.

Pickett was charged with one count each of burglary and grand larceny with the assistance of a child for stealing, with the assistance of two juveniles, a Gucci purse worth \$690.00 from a Neiman Marcus Department Store. The State sought large habitual criminal adjudication against Pickett, alleging that she had six prior felony convictions. Near the end of the State's case-in-chief, Pickett entered into a plea bargain with the State. Pickett agreed to plead guilty to one count of grand larceny with the assistance of a child and further agreed to stipulate to eligibility for small habitual criminal adjudication with a potential sentencing range of 5 to 20 years. In exchange for the guilty plea, the State agreed to dismiss the burglary count and not seek a life prison term under the large habitual criminal statute.

Prior to sentencing, Pickett filed a proper person presentence motion to withdraw the guilty plea. The State opposed the motion. The

district court appointed alternate counsel to represent Pickett. After hearing arguments from counsel, the district court denied the motion to withdraw the plea.

Pickett contends that the district court abused its discretion in denying her presentence motion to withdraw her guilty plea. Specifically, Pickett contends that her guilty plea was not knowing and intelligent because she was taking an anti-depressant, her attorney coerced her into accepting the plea, and she was not fully informed about the constitutional rights she was waiving. Pickett also contends that there is an inadequate factual basis for the guilty plea because the video surveillance tape does not actually show her removing the purse from the department store. We conclude that Pickett'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.<sup>1</sup> A defendant has no right, however, to withdraw her plea merely because she moved to do so prior to sentencing or because the State failed to establish actual prejudice.<sup>2</sup> 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 was not entered knowingly, voluntarily and intelligently.<sup>3</sup> "On appeal from a district court's denial of a motion to withdraw a guilty plea, this

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<sup>1</sup>State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

<sup>2</sup>Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

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

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.'"<sup>4</sup>

In this case, the totality of circumstances indicates that the guilty plea was knowing, voluntary and intelligent. Pickett signed a written plea agreement wherein she stated that she understood the constitutional rights she was waiving by pleading guilty, was not under the influence of a drug that would impair her ability to comprehend the agreement and plea canvass proceedings, and was entering the agreement voluntarily and not under duress or coercion. At the plea canvass, the district court thoroughly canvassed Pickett on the consequences of the guilty plea, and she informed the district court that she read and understood the plea agreement. Pickett then explained what led her to plead guilty to the grand larceny charge:

I went into the store. I picked up a purse. Concealed it. Went to the next destination to the second floor. I said I'm scared. I'm not taking this, and he [the minor] said I'll get it for you. So I get the purse and handed it to him, held the shirt up to block the view and he ran off with it.

Pickett also advised the district court at the plea canvass that she was pleading guilty freely and voluntarily and that no one had threatened her in order to get her to plead guilty. Because the record indicates that the guilty plea was knowing, voluntary and intelligent, the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea.

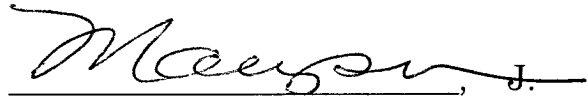
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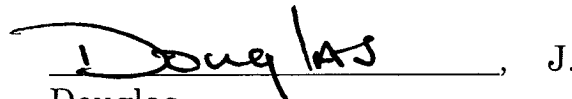
<sup>4</sup>Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

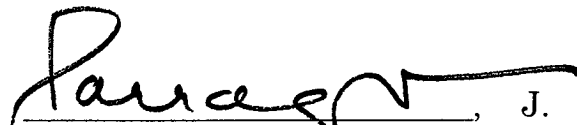
Pickett's final argument in its entirety states: "[t]he district court abused his discretion when imposing a sentence as a habitual criminal." Pickett, however, fails to assert any cogent argument identifying how the district abused its discretion or cite any relevant legal authority on the issue.<sup>5</sup> Because the argument has not been adequately briefed, we need not consider Pickett's contention.

Having concluded that Pickett's arguments lack merit or have not been adequately briefed, we

ORDER the judgment of conviction AFFIRMED.

  
Maupin

  
Douglas

  
Parraguirre

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

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<sup>5</sup>See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").