

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRION PIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44149

FILED

APR 22 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony theft. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court adjudicated appellant Perrion Piper as a habitual criminal and sentenced him to serve a prison term of 24 to 60 months to run concurrently to an unrelated case.

Piper contends that the district court abused its discretion in denying his presentence motion to withdraw the guilty plea. Citing to Breault v. State,¹ Piper contends that his guilty plea was invalid because he did not "expressly waive the factual impossibility of the plea to the charge of felony theft" and, in fact, "consistently and adamantly denied that he took any property that had a value greater than \$250.00." We conclude that Piper's contention lacks 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

¹116 Nev. 311, 996 P.2d 888 (2000) (upholding sentence that violated the forty-percent provision of NRS 193.130(2) because the defendant expressly waived the defect in entering the plea bargain).

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 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 totality of the circumstances indicates that Piper entered a knowing, voluntary and intelligent guilty plea. Piper signed a written plea agreement and was thoroughly canvassed by the district court. Although Piper notes that his guilty plea to felony theft was fictitious, the record indicates that Piper understood the nature of the plea bargain. The written plea agreement signed by Piper expressly stated that: "Defendant agrees to waive any defects in the pleadings" and, at the plea canvass, defense counsel informed the court that Piper was waiving

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

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

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)).

the defect with respect to the value of the goods stolen. Moreover, in the plea agreement and at the plea canvass, Piper was advised of the elements of the felony theft charge, as well as the sentencing range for that offense. Finally, the record indicates that Piper received a substantial benefit for entering into the plea agreement in that the State agreed to stay the sentencing hearing for one-year so that Piper could enter a drug treatment program and, provided Piper completed drug treatment and committed no additional criminal offenses, the State agreed not to oppose probation at sentencing. Having accepted that benefit, Piper may not avoid the consequences of his bargain by attacking the sufficiency of the evidence of the bargained-for charge.⁶ Accordingly, the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea.

Piper also contends that the district court violated his constitutional right to effective assistance of counsel by denying his motion to appoint independent counsel because his trial counsel coerced the guilty plea. We conclude that Piper's contention lacks merit. In the signed plea agreement and at the plea canvass, Piper stated that he was not acting under duress or coercion and that he was entering his guilty plea freely and voluntarily. Piper's claim that he was coerced into entering the guilty plea by trial counsel is therefore belied by the record.⁷ Moreover, in the proceedings below, Piper failed to allege any facts that


⁶See Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 96-97 (1998) (rejecting argument that guilty plea was invalid based upon an unlawful plea agreement where defendant "voluntarily entered into the plea agreement and accepted its attendant benefits").

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

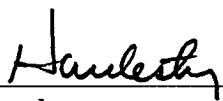
would have established coercion.⁸ Accordingly, the district court did not err in denying the motion for independent counsel.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Thomas v. State, 94 Nev. 605, 608, 584 P.2d 674, 676 (1978) (discussing adequate cause necessary for change of counsel).