IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL STEVEN GUARDADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44331

FILED

AUG 18 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of burglary, one count of first-degree arson, and three counts of possession of stolen property. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. The district court sentenced appellant Manuel Steven Guardado to serve two consecutive prison terms of 48 to 120 months for the burglary counts, a consecutive prison term of 72 to 180 months for the arson count, and three consecutive prison terms of 24 to 60 months for the stolen property counts.

Guardado first contends that the district court abused its discretion in denying his oral presentence motion to withdraw the guilty plea made just prior to the sentencing hearing. Guardado contends that he should be allowed to withdraw his plea because: (1) he was led to believe that he could withdraw his plea if he wanted to do so; (2) he did not understand whether probation was available on the charges; and (3) he was "rushed" into pleading guilty without understanding what he was doing. We conclude that Guardado'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

motion in its discretion for any substantial reason that is fair and just.[1] 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.[2] 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.[3] "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.'"[4]

In this case, after considering Guardado's allegations, the district court denied the motion ruling that, under the totality of the circumstances, Guardado entered his guilty plea freely and voluntarily. Specifically, the district court noted that, at the plea canvass, Guardado and his codefendant:

> answered questions under oath put by the Court concerning the constitutional rights they would be waiving by entering guilty pleas, as well as a reading of the charges to each of the defendants, their acknowledgment that they understood the maximum possible sentence that could be imposed

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

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

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

[4]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)).

> upon each charge, their acknowledgment through the Court's question of the meaning of concurrent and consecutive sentences, . . . and the terms of the plea bargain agreement as stated by counsel, as acknowledged by each defendant.

The district court also noted that Guardado was never advised that he could withdraw the plea at any time and the plea agreement correctly stated that Guardado was eligible for probation. In exchange for the guilty plea, Guardado received a substantial benefit in that the State dropped two gross misdemeanor counts of conspiracy to commit burglary and possession of burglary tools, one felony count of conspiracy to commit first-degree arson, and agreed not to seek habitual criminal adjudication. Because the record indicates that Guardado's guilty plea was knowing, voluntary and intelligent, we conclude that the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea.

Guardado next contends that the district court abused its discretion by imposing an excessive sentence. Guardado notes that the district court imposed all counts to run consecutively resulting in an "unfairly excessive" sentence of 20 to 50 years in prison. Citing to the dissent in Tanksley v. State,[5] Guardado asks this court to review the sentence imposed to see that justice was done. We conclude that Guardado's contention lacks merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate

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[5]113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[6] Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[7]

In the instant case, Guardado does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.[8] Moreover, it is within the district court's discretion to impose consecutive sentences.[9] Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. The prosecutor noted that Guardado and his brother both had significant criminal histories, and argued that they were "working career criminals" who "find it easy to go out in the middle of the night, burglarize and rob and steal, and then set fires to cover up their crimes or to wreak even

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[6]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[7]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[8]See NRS 205.060(2); NRS 205.010; 205.275(2)(b); 193.130(2)(c).

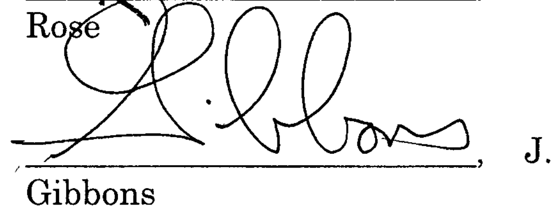
[9]See NRS 176.035(1); Warden v. Peters, 83 Nev. 298, 303, 429 P.2d 549, 552 (1967).

additional havoc on all the victims in this case."[10] Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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

ORDER the judgment of conviction AFFIRMED.

_____________________________, J.
Rose



_____________________________, J.
Gibbons

_____________________________, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
John P. Calvert
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[10]The instant criminal charges arose from the burglary of two sports bars in Reno; one of the bars was set on fire in an apparent effort to conceal the crime.