

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMMIE JACKSON A/K/A JAMIE
RAMONE JACKSON A/K/A JAMIE
JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44744

FILED

APR 20 2006

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from the district court's denial of appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On February 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 180 months in the Nevada State Prison. Appellant did not file a direct appeal.

On October 15, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 4, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his plea was unknowingly and involuntarily entered because the district court improperly coerced him into accepting the State's plea offer. Specifically, appellant claimed that the district court facilitated the plea by promising

to sentence appellant to the minimum terms of 24 to 60 months but, after appellant accepted the plea, failed to sentence him to the promised term.

"A plea of guilty must be the result of an informed and voluntary decision, not the product of coercion."¹ "[J]udicial involvement in plea negotiations inevitably carries with it the high and unacceptable risk of coercing a defendant to accept the proposed agreement and plead guilty."² "A plea agreement is construed according to what the defendant reasonably understood when he or she entered the plea."³ The defendant has the burden of showing that the guilty plea was not entered knowingly and intelligently.⁴ However, 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."⁵

Our preliminary review of the record on appeal revealed that the district court may have improperly participated in the plea negotiation process, which may have resulted in appellant's plea being involuntarily entered. This court directed the State to show cause why the appeal should not be remanded to the district court to allow the appellant to withdraw his plea. In its response, the State argued that the district

¹Standley v. Warden, 115 Nev. 333, 336, 990 P.2d 783, 785 (1999) (citing Smith v. State, 110 Nev. 1009, 1010, 879 P.2d 60, 61 (1994)).

²U. S. v. Bruce, 976 F.2d 552, 556 (9th Cir. 1992).

³Sullivan v. State, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999) (citing Statz v. State, 113 Nev. 987, 993, 944 P.2d 813, 817 (1997)).

⁴See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁵State 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)).

court's comments did not cause appellant's plea to be involuntarily entered. We disagree.

We conclude that appellant's guilty plea was unknowingly and involuntarily entered due to comments made by the district court.⁶ The following exchange occurred on December 29, 2003:

COUNSEL: Your Honor, this matter was waived pursuant to negotiations in justice court, but it wasn't my case, it was Mr. Davis'. In talking to Mr. Jackson today, he can't decide. My request is pass it a week, have Mr. Davis talk to him and see if they can clarify what he wants to do.

COURT: Sure. I don't want to rush anybody, but I notice he had first degree kidnapping with weapon, that's, like, life in prison, isn't it?

COUNSEL: That's what it would carry.

COURT: Then he had robbery with a weapon, then he had grand larceny auto, that's one case. The other case he had escape. And what were the negotiations?

STATE: My understanding was he was going to be pleading to one couldn't [sic] robbery with the use of a deadly weapon. We would retain the right to argue the terms and conditions of defendant's probation and will make no recommendation at the time of sentencing.

COURT: What do you mean "probation?"

STATE: You know, this was done by Miss Adams, I'm not sure what the deal was.

COUNSEL: That's what my notes indicate, it was a guilty plea agreement that has some errors in it.

COURT: First degree kidnapping is dismissed?

COUNSEL: That's correct.

⁶See Standley, 115 Nev. at 336-37, 990 P.2d at 785; Smith, 110 Nev. at 1014, 879 P.2d at 63.

COURT: But you're not sure what it is now?

COUNSEL: We are sure what the offer is.

COURT: What do you think the offer is?

COUNSEL: Plead guilty to robbery with the use of a deadly weapon, dismiss the other case with no recommendation.

COURT: The escape?

STATE: Yes, sir.

COURT: I don't think robbery with a weapon is probationable.

COUNSEL: No, it's not.

COURT: Is that the problem: I can give him the minimums, 60/24, plus 60/24. Listen, it's a serious matter. You need a little time to talk to your lawyer on this, Mr. Jackson?

DEFENDANT: No. As long as the escape is dismissed I'll take the robbery with use.

Appellant could reasonably conclude from the district court's statement that he would be sentenced to the minimum prison terms. The judge effectively convinced appellant to accept the State's plea offer.⁷


Moreover, during the plea canvass, the district court never asked appellant if he had been promised anything to induce him to plead guilty, nor did the district court canvass appellant on his understanding of the district court's discretion to determine sentence. The plea agreement stated that the court could sentence appellant to a minimum of not less than two years and a maximum term of not more than fifteen years, and it neither stipulated to nor recommended a certain sentence; however, the district court's suggestion of minimum terms tainted the plea process and

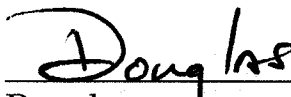
⁷See id.

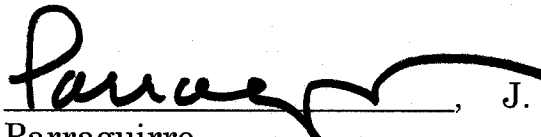
plea agreement. Looking to the totality of the circumstances⁸, appellant's plea of guilty was involuntary and invalid.

Based on the above, we reverse the decision of the district court, and remand the matter to the district court to allow appellant to withdraw his plea.⁹ Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.¹⁰ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹¹


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

⁸See State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).

⁹See Van Buskirk v. State, 102 Nev. 241, 244, 720 P.2d 1215, 1216-17 (1986) (specifying when the proper remedy should be withdrawal of plea).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Joseph T. Bonaventure, District Judge
Jammie Jackson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk