

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY ALLEN GOODMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44891

FILED

NOV 17 2005

ORDER OF AFFIRMANCE

WILLIAM BLOOM
CLERK OF SUPREME COURT
J. Richards

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of one count of attempted grand larceny. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Danny Allen Goodman to a prison term of 12-30 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed 12 months.

Goodman's sole contention is that the district court abused its discretion in denying his presentence motion to withdraw his nolo contendere plea. Specifically, Goodman argues that he provided counsel with the names of witnesses who would have testified that he did not steal his brother-in-law's vehicle, and that counsel's failure to properly investigate the case "was a form of coercion." Therefore, as a result of counsel's ineffectiveness, Goodman claims that his plea was not entered voluntarily. Goodman also claims that the district court did not consider the totality of the circumstances prior to denying his motion. We disagree with Goodman's contention.

"A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any 'substantial reason'

if it is 'fair and just.'"¹ In deciding whether a defendant has advanced a substantial, fair, and just reason to withdraw a guilty plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently.² The district court "has a duty to review the entire record to determine whether the plea was valid. . . . [and] may not simply review the plea canvass in a vacuum."³ A defendant has no right, however, to withdraw his plea merely because he moves to do so prior to sentencing or because the State failed to establish actual prejudice.⁴ Nevertheless, a more lenient standard applies to motions filed prior to sentencing than to motions filed after sentencing.⁵

An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.⁶ "On appeal from the district court's determination, we will presume that the lower court correctly

¹Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998) (quoting State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969)); see also NRS 176.165.

²See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

³Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

⁴See Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

⁵See Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

⁶NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)).

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."⁷

We conclude that the district court did not abuse its discretion in denying Goodman's presentence motion to withdraw his guilty plea. At the plea canvass, the State made an offer of proof and Goodman confirmed that he was entering a nolo contendere plea because the State possessed sufficient evidence to convict him beyond a reasonable doubt of grand larceny.⁸ A nolo contendere plea is, by its nature, accompanied by a denial of the facts constituting the offense.⁹ Our review of the plea canvass reveals that it was thorough and that Goodman entered his plea intelligently. Notably, Goodman never claimed to misunderstand the plea negotiations.

In his motion to withdraw, Goodman contended that counsel failed to investigate and verify his story that the vehicle in question was the subject of an agreement between himself and the alleged victim wherein Goodman was given permission to keep the vehicle. Despite the fact that both Goodman and his counsel had knowledge of this potentially exculpatory information, Goodman claims that he elected to enter a nolo plea because he was "told by counsel that if he did not plead guilty that he

⁷Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁸State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996) (in accepting a nolo contendere plea, "a district court must determine not only that there is a factual basis for the plea but 'must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence'" (quoting Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982))).

⁹Id. at 1479, 930 P.2d at 705.

would be going to prison for a very long time.” At the hearing on Goodman’s motion to withdraw, Goodman argued instead that his counsel informed him that none of the alleged witnesses “would come forward.” The district court noted that it had received the briefs on the motion, and the court heard arguments from counsel. The parties did not present any witnesses. Based on the totality of the circumstances, we conclude that Goodman failed to demonstrate a fair and just reason to withdraw his plea.

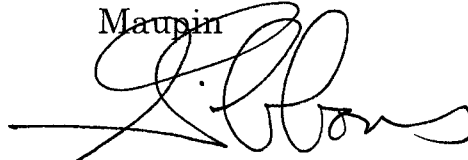
Therefore, having considered Goodman’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.



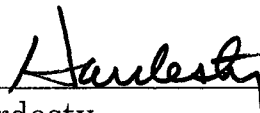
Maupin

J.



Gibbons

J.



Hardesty

J.

cc: Hon. Steven R. Kosach, District Judge
John P. Calvert
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk