IN THE SUPREME COURT OF THE STATE OF NEVADA

FORTUNE RUSHTON, AKA CHARLES BARRON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45910

FILED

FEB 23 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant Fortune Rushton to serve two consecutive prison terms of 6 to 15 years to run concurrently with the sentence imposed in another criminal case.

Rushton contends that the district court abused its discretion by denying his oral presentence motion to withdraw the guilty plea because his plea was not knowing. Specifically, Rushton contends that he misunderstood what a "stipulated sentence" was and believed when the district court advised him that she was not obligated to follow the sentencing recommendation that he was going to receive a lesser sentence than the maximum sentence to which the parties had stipulated.[1] We conclude that Rushton's contention lacks merit.

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[1]In particular, the district court stated, "the range of sentencing is something that is always left to the judge, whether you've negotiated, as apparently you have in this case, a length of incarceration and certain of these matters running concurrent with other matters in the system, I don't have to go along with that."

The district court may grant a presentence motion to withdraw for any substantial reason that is fair and just.[2] "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.'"[3]

We conclude that the district court did not abuse its discretion in denying the motion to withdraw the guilty plea. The totality of the circumstances indicates that Rushton's guilty plea was knowing and voluntary and that he was properly advised with regard to the potential sentence. At the plea canvass and in the plea agreement, Rushton was correctly advised of the sentencing range for the charged offense. Additionally, the signed plea agreement included an acknowledgement from Rushton that he had "not been promised or guaranteed any particular sentence by anyone" and was aware that his "sentence was to be determined by the Court within the limits prescribed by statute." Finally, we note that Rushton received a substantial benefit for the guilty plea in that the State dropped one count of burglary while in possession of a deadly weapon, two counts of robbery with the use of a deadly weapon, and two counts of being an ex-felon in possession of a firearm. Also, the State agreed not to oppose Rushton's request that the sentence run concurrently with another criminal case.

Although Rushton claims that he pleaded guilty based on his belief that the district court would give him less than the stipulated

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

[3]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)).

sentence, 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.'"[4] Accordingly, we conclude that Rushton's guilty plea was knowing and intelligent, and the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea.

Having considered Rushton's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Bunin & Bunin
Longabaugh Law Offices
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[4]State 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)).