IN THE SUPREME COURT OF THE STATE OF NEVADA

CECIL LAMAR HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47659

FILED

MAY 09 2007

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 lewdness with a child under the age of 14 years. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Cecil Lamar Hall to serve a prison term of life with parole eligibility after 10 years.

Hall contends that the district court erred by denying his presentence motion to withdraw his guilty plea. Specifically, Hall contends that his guilty plea was not voluntarily or knowingly entered because he was (1) "hearing voices" and incompetent at the time he entered his plea, and (2) not advised that the offense to which he pleaded was non-probationable. Hall also claims that the State could not demonstrate that it was prejudiced by his filing of a motion to withdraw the plea. We disagree with Hall'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

---

[1]Woods 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.

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

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

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

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

[6]NRS 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)).

court's determination, we 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."[7] If the motion to withdraw is based on a claim that the guilty plea was not entered knowingly and intelligently, the burden to substantiate the claim remains with the appellant.[8]

Our review of the totality of the circumstances reveals that Hall entered his guilty plea voluntarily and knowingly. Although the record does not indicate that Hall was advised by the court that his offense was non-probationable, the written guilty plea agreement, signed by Hall, reflects the parties' stipulation to a sentence of 10 years to life.[9] In fact, the agreement states: "I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada State Prison for LIFE with the possibility of parole with parole eligibility after a minimum of ten (10) years." (Emphasis added.) Hall has never challenged the veracity of the stipulation.

Additionally, at the hearing on Hall's motion, the district court was informed that Hall, after an evaluation, was deemed competent prior to the entry of his plea, and then again by both a psychiatrist and clinical

---

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

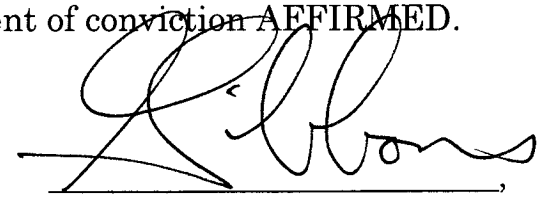
[8]See id. at 272, 721 P.2d at 368.

[9]See generally Little v. Warden, 117 Nev. 845, 851, 34 P.3d 540, 544 (2001) (holding that "[w]here it appears, in examining the totality of the circumstances, that a defendant knew that probation was not available at the time of the entry of the guilty plea, we will not vitiate an otherwise valid guilty plea").

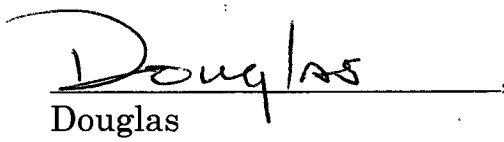
psychologist after he expressed a desire to withdraw his guilty plea. Citing to the doctors' reports, the district court found that Hall failed to substantiate his claim that he was incompetent and that his guilty plea was not entered knowingly and intelligently. We agree and conclude that the district court did not abuse its discretion in denying Hall's presentence motion to withdraw his guilty plea.

Having considered Hall's contentions and concluded that they are without merit, we

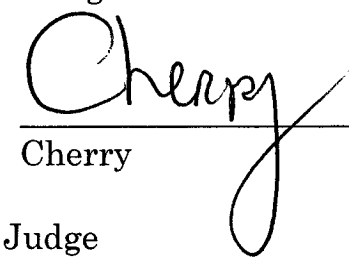
ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Valorie Vega, District Judge
Osvaldo E. Fumo, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk