IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK BROWN A/K/A DERRICK DEROY BROWN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48431

FILED

NOV 0 8 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On November 14, 2006, the district court convicted appellant Derrick Brown, pursuant to an Alford plea,[1] of sexual assault and sentenced him to serve a term of life in prison with the possibility of parole in 10 years. This appeal followed.

Prior to his sentencing hearing, Brown filed a motion to withdraw his plea, which was denied by the district court. He argues on appeal that the district court erred and that he should be allowed to withdraw his plea because it was not freely and voluntarily entered. Specifically, Brown argues that his counsel did not adequately communicate with him prior to entering the plea, and he did not understand the elements of the crimes he was charged with and what the State would have to prove at trial to convict him. We disagree.

[1]North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendre." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

A plea agreement is presumptively valid.[2] To invalidate a plea, a defendant has the burden of showing that it was not freely, knowingly, and voluntarily entered under a totality of the circumstances.[3] However, a district court may grant a pre-sentence motion to withdraw a plea for any substantial reason that is fair and just.[4] We review a district court's denial of a motion to withdraw a guilty plea for an abuse of discretion.[5]

Our review of the plea agreement and canvass by the district court reveals that Brown's plea was freely, knowingly, and voluntarily entered by him. Brown signed a written plea agreement, where he acknowledged that he was entering the plea voluntarily, without duress or coercion. Brown also acknowledged that he had discussed the plea with his counsel and he understood the following: the consequences of the plea, the elements of the original charges, and any possible defenses that might be in his favor. And Brown believed that entering the plea was in his "best interest."

A transcript reveals that the district court thoroughly canvassed Brown about his decision to enter the plea. During the canvass,

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

[3]State v. Freese, 116 Nev. 1097, 1104-05, 13 P.3d 442, 447-48 (2000); Bryant, 102 Nev. at 272, 721 P.2d at 368.

[4]State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969); see NRS 176.165.

[5]Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

Brown stated that he had read the plea agreement, understood it, and that all of his questions about it were answered. Brown also stated that he was not coerced into entering the plea, his counsel had explained to him possible defenses to the original charges, and he understood the possible sentence.

When asked by the district court whether his counsel had explained to him what the State was required to prove if his case went to trial, Brown replied, "No, ma'am." The district court thoroughly explained to Brown the elements of the original charges against him, including the sexual assault count to which he was pleading. When asked by the district court whether all of his questions about the agreement were answered by his counsel, Brown replied, "Yes, ma'am." Brown later began to propose a hypothetical question to the district court, but he then stated "never mind." The district court then asked Brown: "Do you have any questions 'cause I'm going to accept your plea here?" Brown replied, "No, Your Honor."

Brown's claims are belied by the record and Brown's own statements to the district court. A totality of the circumstances reveals that Brown's plea was freely, knowingly, and voluntarily entered. We conclude that Brown has failed to demonstrate the district court abused its discretion by denying his motion to withdraw his plea.

Brown also raises on appeal what appear to be independent claims of ineffective assistance of trial counsel and asks us to remand his appeal for an evidentiary hearing to determine their merit, if any. However, claims of ineffective assistance of trial counsel should be raised

in a timely post-conviction habeas corpus petition and considered by the district court in the first instance.[6] Generally, such claims are not properly raised on direct appeal. Because Brown has not filed a post-conviction habeas corpus petition below and squarely presented his ineffective-assistance-of-trial-counsel claims, we conclude that his claims are not properly before us at this time. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[6]See Pellegrini v. State, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001).