

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVERAUX C. JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48825

**FILED**

AUG 21 2007

BY JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On January 31, 2005, appellant Deveraux Johnson was convicted, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced Johnson to serve a prison term of 48 to 120 months. Johnson did not file a direct appeal.

On October 31, 2005, with the assistance of counsel, Johnson filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. After hearing argument from counsel, the district court denied the petition. Johnson filed a timely appeal.

First, Johnson contends that the district court erred in denying his petition. Citing to Johnson v. Sheriff,<sup>1</sup> Johnson contends that his guilty plea was not knowing and intelligent because, during the plea canvass, the district court did not confirm that Johnson had taken a "substantial step" toward committing sexual assault. In a related

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<sup>1</sup>91 Nev. 161, 532 P.2d 1037 (1975).

argument, Johnson alleges that his guilty plea was unknowing because he did not understand that the charged offense of attempted sexual assault required a “substantial step” toward commission of sexual assault. We conclude that Johnson’s contention lacks merit.

A guilty plea is presumptively valid, and appellant carries the burden of establishing that his plea was not entered knowingly and intelligently.<sup>2</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>3</sup> This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>4</sup>

The totality of the circumstances indicates that Johnson’s guilty plea was knowing and voluntary and that he understood the nature of his attempted sexual assault charge. Johnson was thoroughly canvassed by the district court and signed a written plea agreement. Johnson confirmed, during the plea canvass and in the plea agreement, that he understood the elements of the charged offense and that he was entering his guilty plea freely and voluntarily. Johnson also admitted to acts that amounted to attempted sexual assault, *i.e.*, informing the district court that he attempted to have the victim perform fellatio without her consent or under conditions which he knew she could not consent. Therefore, the district court did not err in denying Johnson’s claim.

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<sup>2</sup>See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364 (1986); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).


<sup>3</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

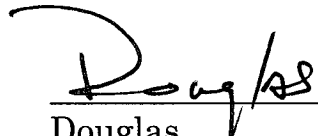
<sup>4</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

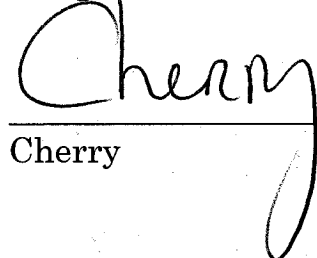
Next, Johnson contends that the entry of his plea resulted in manifest injustice because his acts consisted of "mere preparation," and there was an insufficient factual basis in support of the attempted sexual assault offense. We conclude that Johnson's contention lacks merit. As previously discussed, Johnson admitted to facts sufficient to support a finding that he committed attempted sexual assault. Further, the victim testified at the preliminary hearing that Johnson forced her to perform sexual acts. Finally, we note that Johnson received a substantial benefit under the plea agreement by avoiding more serious charges.<sup>5</sup> Thus, Johnson failed to demonstrate a manifest injustice, and the district court did not err in denying this claim.

Having considered Johnson's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>5</sup>Johnson was originally charged with one count of first-degree kidnapping (NRS 200.310, NRS 200.320); one count of open and gross lewdness (NRS 201.210); and twelve counts of sexual assault (NRS 200.364, NRS 200.366).

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