IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ARTHUR CECRLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49070

FILED

JUN 12 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 felony attempted possession of a controlled substance. Eighth Judicial District Court, Clark County; Elizabeth Halverson, Judge. The district court sentenced appellant Thomas Arthur Cecrle to a prison term of 12 to 30 months, but then suspended execution of the sentence and placed him on probation for a time period not to exceed 2 years with the condition that he serve 90 days in the Clark County Detention Center.

Cecrle first contends that the district court abused its discretion in denying his motion to withdraw the guilty plea. Citing to federal case law,[1] Cecrle contends that his guilty plea is involuntary because it was induced by a misrepresentation from defense counsel that the conviction would be treated as a gross misdemeanor. We conclude that

[1]See Lesko v. Lehman, 925 F.2d 1527 (3d Cir. 1991); United States v. Marzgliano, 588 F.2d 395 (3d Cir. 1978); United States v. Valenciano, 495 F.2d 585 (3d Cir. 1974); but see Wellnitz v. Page, 420 F.2d 935, 936 (10th Cir. 1970) ("An erroneous sentence estimate by defense counsel does not render a plea involuntary.").

the district court did not abuse its discretion in denying the motion to withdraw the guilty plea.

The totality of the circumstances indicates that Cecrle's guilty plea was knowing and voluntary.[2] At the plea canvass and in the plea agreement, Cecrle was correctly advised that the charged offense could be treated either as a felony or a misdemeanor at the discretion of the district court. Additionally, the signed plea agreement included an acknowledgement from Cecrle 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."

Although Cecrle claims that he pleaded guilty based on defense counsel's representation that the offense would be treated as a gross misdemeanor, 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.'"[3] Accordingly, we conclude that Cecrle's guilty plea was knowing and intelligent, and that the district court did not abuse its discretion in denying the motion to withdraw the guilty plea.

Cecrle also contends that the sentencing court abused its discretion and violated his right to due process at sentencing by imposing

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[2]See State v. Freese, 116 Nev. 1097, 1104-06, 13 P.3d 442, 447-48 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).

[3]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)).

a sentence based on a domestic battery charge that had been dismissed. Specifically, Cecrle contends that the sentencing court relied on inaccurate and unproven information because it failed to consider that the domestic battery charge had been dismissed based on "absolute innocence and lack of probable cause."

We conclude that the district court did not abuse its discretion in considering Cecrle's prior arrest for domestic battery. This court has recognized that the sentencing court may consider "prior acts for which no conviction has been obtained, provided that the information in not 'founded on facts supported by impalpable or highly suspect evidence.'"[4] While the sentencing court has broad discretion to consider crimes for which a defendant was not convicted to gain "a fuller assessment of the defendant's 'life, health, habits, conduct, and mental and moral propensities,'" the district court may not punish a defendant for prior crimes.[5]

We disagree with Cecrle that the district court imposed an excessive sentence based on the prior domestic battery arrest. There was no mention of the prior domestic battery by defense counsel, the prosecutor, or the district court at the sentencing hearing. And at sentencing, Cecrle failed to object to the reference to the domestic battery arrest in the presentence investigation report or challenge the imposition of the condition of probation requiring Cecrle to attend domestic violence

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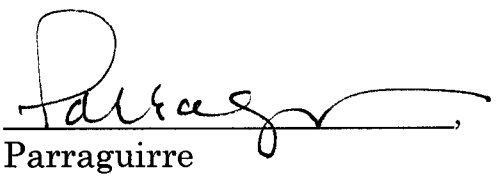
[4]Ferris v. State, 100 Nev. 162, 163, 677 P.2d 1066, 1066 (1984) (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)).

[5]Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (quoting Williams v. New York, 337 U.S. 241, 245 (1949)).

counseling. Accordingly, the district court did not abuse its discretion or violate Cecrle's due process rights at sentencing.

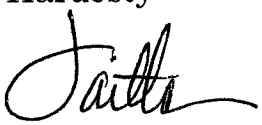
Having considered Cecrle's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre

_____, J.
Hardesty



_____, J.
Saitta

cc: Chief Judge Eighth Judicial Court
Hon. Elizabeth Halverson, District Judge
Chesnoff & Schonfeld
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk