


IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES FRANCIS MEEGAN, II A/K/A
JAMES MEEGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49373

FILED

SEP 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea under North Carolina v. Alford, 400 U.S. 25 (1970), for one count of first-degree murder. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant James Francis Meegan, II, was previously convicted pursuant to a jury verdict and the district court sentenced him to life in prison without the possibility of parole. This court affirmed the judgment of conviction. Meegan v. State, 114 Nev. 1150, 968 P.2d 292 (1998). However, following a denial by the district court of his post-conviction petition for a writ of habeas corpus, this court remanded for a new trial based on trial counsel's failure to challenge an instruction requiring the jury to presume malice. Meegan v. State, Docket No. 40983 (Order of Reversal and Remand, December 22, 2004). Following the remand, Meegan pleaded guilty pursuant to Alford, and the district court sentenced him to a prison term of ten years to life. This appeal follows.

On appeal, Meegan contends that (1) it was an abuse of discretion to summarily deny his presentence motion to withdraw his

guilty plea and (2) his right to conflict-free counsel was violated because his trial attorney had previously represented Meegan's daughter, who was a State witness.

Motion to withdraw guilty plea

Meegan contends that it was an abuse of discretion to summarily deny his presentence motion to withdraw his guilty plea because he (1) provided a credible story explaining his actions and (2) there was no prejudice to the State.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). "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.'" 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)).

Citing Mitchell v. State, 109 Nev. 137, 848 P.2d 1060 (1993), Meegan argues that the district court should have allowed him to withdraw his guilty plea because there was no proof that he actually intended to murder the victim and there was no prejudice to the State because the motion was made before sentencing.

Meegan signed a plea agreement and pleaded guilty pursuant to Alford, which, by its terms, is an admission that the State possesses sufficient evidence to obtain a conviction, that the defendant is seeking a lesser term by entering a plea of guilty, but that the defendant does not

admit guilt. 400 U.S. at 35-38. Such was the case in this instance. Meegan's plea agreement, which he agreed he had read and understood fully, reflected these concepts. Because a plea pursuant to Alford allows a defendant to deny the factual allegations of the charge, Meegan's denial of guilt at the time of the plea is academic and does not entitle him to withdraw his plea. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Further, a defendant has no right to withdraw his plea merely because he moves to do so prior to sentencing or the State fails to establish actual prejudice. See Molina v. State, 120 Nev. 185, 191-92, 87 P.3d 533 (2004) (Although there is "a more relaxed standard to presentence motions to withdraw guilty pleas than post-sentencing motions," it is still within the district court's discretion whether to grant or deny). Thus, we conclude that the district court did not abuse its discretion by denying Meegan's motion to withdraw his guilty plea.

Conflict of interest

Meegan contends that his right to conflict-free counsel was violated because his attorney also represented Meegan's daughter who was a State's witness "in the same case."

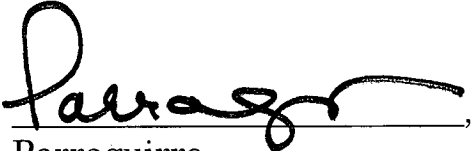
To show a violation of his right to counsel, Meegan must demonstrate both an actual conflict and an adverse effect on his attorney's performance. Cuyler v. Sullivan, 446 U.S. 335, 348 (1980). "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991)). "[W]e presume prejudice only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's

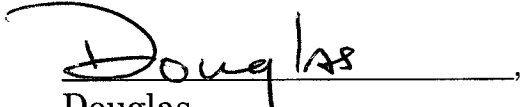
performance.” Burger v. Kemp, 483 U.S. 776, 783 (1987) (internal quotation marks and citation omitted); see also Lockhart v. Terhune, 250 F.3d 1223, 1226 (9th Cir. 2001) (noting that harmless error does not apply where an actual conflict of interest is alleged). The burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error. Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980); Lee v. Sheriff, 85 Nev. 879, 455 P.2d 623 (1969).

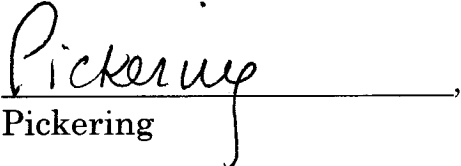
In the present case, Meegan has alleged a conflict but has not provided any details of the alleged conflict such as the nature of the representation, date of occurrence, or other relevant facts to enable this court to adequately review whether any conflict actually existed, let alone, whether it adversely affected his attorney’s performance. Thus, we deny relief on this claim.

Having considered Meegan’s contentions and determined they are without merit, we

ORDER the amended judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

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