IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES K. MCCALLUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49487

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court adjudicated appellant James McCallum a habitual criminal and sentenced him to a prison term of 60 to 240 months.

McCallum contends that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea. Specifically, McCallum contends that the district court should have allowed McCallum to withdraw his guilty plea because he was incompetent at the entry of his plea.

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.[1] "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

[1]State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"[2] A district court's determination of competency after a competency evaluation is a question of fact that is entitled to deference on review.[3] Such a determination will not be overturned if it is supported by substantial evidence.[4]

The district court found that McCallum's guilty plea was knowing, voluntary, and intelligent, and that he was competent at the time of entry of his plea. The district court's findings are supported by substantial evidence. In particular, four doctors found that McCallum was competent based on extrinsic evidence and stated that it was probable that McCallum was malingering. Additionally, doctors at Lake's Crossing reported that McCallum showed an above average understanding of the legal system and that staff did not observe symptoms consistent with psychosis. Although two doctors reported findings that McCallum was incompetent at the time of the guilty plea, their findings of incompetency were based on McCallum's statements only and rested on the accuracy of those statements. Accordingly, the district court did not abuse its discretion by denying the presentence motion to withdraw his guilty plea.

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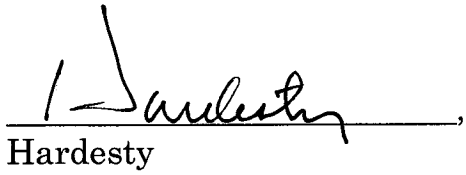
[2]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

[3]See Thompson v. Keohane, 516 U.S. 99, 111 (1995); Mackey v. Dutton, 217 F.3d 399, 411-13 (6th Cir. 2000).

[4]Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997).

Having considered McCallum's contention and determined that it is without merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
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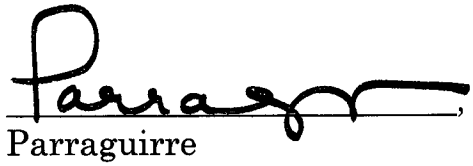
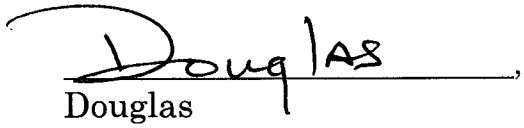


_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Amesbury & Schutt
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk