IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM N. SITES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51103

FILED

MAR 04 2009

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 second-degree murder, destroying evidence, and theft. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant William Sites to prison terms of 10 years to life for murder, 12 months for destroying evidence, and 24 to 60 months for the theft.

Sites contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea because his plea was involuntarily and unknowingly entered, and withdrawal would not have prejudiced the State. Specifically, Sites contends that the district court should have allowed withdrawal of his guilty plea because he did not make factual admissions as to each element of the offenses during his plea canvass, he did not understand the sentence that he faced, his counsel failed to communicate with him, and he pleaded guilty without being aware of an expert's report supporting his self-defense theory.

The district court has discretion to grant a presentence motion to withdraw a guilty plea for any substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). To show that the district court abused its discretion in denying a motion to withdraw a guilty plea, a defendant has the burden to prove that the totality of the circumstances indicates that the plea was not entered knowingly, voluntarily, and intelligently. Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001). "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)).

Our review of the record on appeal reveals that the district court did not abuse its discretion by denying Sites' motion to withdraw his guilty plea. Considering the totality of the circumstances, it is apparent that Sites' guilty plea was entered knowingly and voluntarily. Sites signed a written plea agreement and was canvassed by the district court. During the canvass, the district court explained the charges Sites was facing, including the elements of second-degree murder, and Sites acknowledged that he had committed the acts as described. Sites' plea agreement, which Sites stated that he read and signed, addressed the charges to which he was pleading guilty and the stipulated terms of

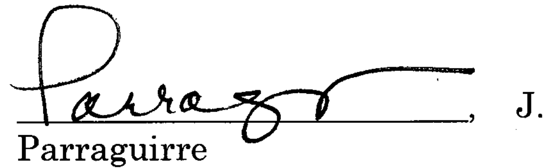
imprisonment. Sites is well-educated and would not have had difficulties understanding the plain language expressed in the plea agreement. Further, Sites' mere subjective belief as to his potential sentence, or hope of leniency, unsupported by a promise from the State or indication by the court, is insufficient to invalidate his guilty plea as involuntary or unknowing. See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

Regarding counsel's failure to communicate or alleged ineffective assistance, the plea agreement further attested that Sites' counsel answered all questions and that Sites was satisfied with the services provided by counsel. Sites further failed to demonstrate that even if counsel had failed to communicate with him as he now proposes, that he would be entitled to relief. See Molina v. State, 120 Nev. 185, 190-92, 87 P.3d 533, 537-38 (2004) (discussing challenges to the validity of a guilty plea based on claims of ineffective assistance of counsel).

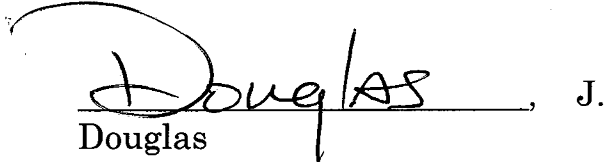
Further, the report issued by the defense's blood-splatter expert did not absolve Sites of guilt. The claim does not present a "credible claim of factual innocence." See Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993). The report merely stated the expert's opinion that the victim was only hit in the head twice, rather than three times, as alleged by the State's expert, and that the victim may have been standing. Sites admitted that he hit his wife in the head with a hammer at least twice and then dismembered her body and disposed of it.

Based on our consideration of the totality of the circumstances, we conclude that Sites has failed to carry his burden to show that the district court clearly abused its discretion by denying his presentence motion to withdraw his guilty plea, and we

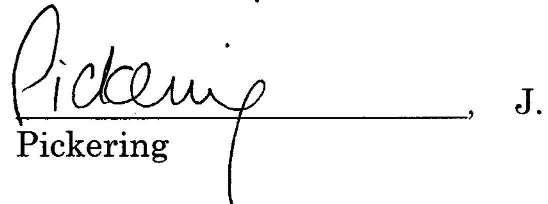
ORDER the judgment of conviction AFFIRMED.[1]



_______________, J.
Parraguirre



_______________, J.
Douglas



_______________, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Special Public Defender David M. Schieck
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

[1]We reject Sites' contention that he was entitled to an evidentiary hearing under the circumstances of this case.