

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTWON R. JONES A/K/A ANTWAN R.  
JONES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51490

**FILED**

**MAY 06 2009**

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On March 25, 2008, the district court convicted appellant Antwan R. Jones, pursuant to a guilty plea, of second-degree murder with the specific intent to promote, further or assist a criminal gang and of conspiracy to commit second-degree murder with the use of a deadly weapon. The district court sentenced Jones to serve a term of life in prison with a minimum parole eligibility of ten years for second-degree murder, plus an equal and consecutive term for the gang enhancement, and to 120 months in prison for conspiracy with a minimum parole eligibility of 48 months, plus an equal and consecutive term for the deadly weapon enhancement.

Jones raises three issues on appeal: (1) the district court erred in denying his motion to withdraw his guilty plea; (2) the district court improperly relied on a flawed presentence investigation report; and (3) a sentence of life in prison with a possibility of parole for a defendant under 18 years of age is a violation of the Nevada and United States Constitutions' prohibitions against cruel and unusual punishment. We conclude that these claims are without merit. However, we remand this matter to the district court to correct a sentencing error.

#### Withdrawal of the guilty plea

Jones argues that the district court erred in denying his presentence motion to withdraw his guilty plea because that plea was entered into involuntarily and unknowingly. In particular, he contends that he was unaware of certain discovery at the time he entered his plea and would not have pleaded guilty had he been aware of this information.

“A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any ‘substantial reason’ if it is ‘fair and just.’” Woods v. State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998). In deciding whether a reason is substantial, fair and just, the district court must determine whether, given the totality of the circumstances, the plea was entered into voluntarily, knowingly, and intelligently. Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001). A guilty plea entered into on the advice of counsel is presumed valid. Id. at 722, 30 P.3d at 1126. This presumption of validity means that a defendant carries a heavy burden to establish that a guilty plea was

not entered into knowingly, intelligently, or voluntarily. Molina v State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). We review the district court's decision for abuse of discretion. Crawford, 117 Nev. at 721, 30 P.3d at 1125.

After considering the totality of the circumstances surrounding Jones's guilty plea, we conclude that the district court did not abuse its discretion. The district court conducted a thorough plea canvass during which Jones admitted in detail that, in conformance with a conspiracy, he willfully shot and killed the victim. The plea canvass was consistent with a detailed written plea agreement, and Jones entered the plea upon advice of counsel. The detailed admissions in the plea agreement and canvass, coupled with the advice of counsel, establish a strong presumption in favor of validity of the plea agreement that Jones fails to overcome.

While Jones's motion to withdraw his guilty plea stated that the discovery he received after entering his guilty plea contained potential witnesses and other favorable evidence that would support a successful defense, the material attached to the motion, which is largely illegible, appears to merely impugn some witnesses because they are incarcerated and may point to someone other than Jones as the triggerman in the murder. Jones fails to state how or why the information contained in that discovery would have changed his decision to plead guilty, especially in light of his clear, unequivocal admissions to the facts underlying the murder and conspiracy charges. Even in his appeal, Jones does not claim

factual innocence. Because Jones has failed to demonstrate that his guilty plea was involuntary or unknowing, the district court did not abuse its discretion by denying his presentence motion to withdraw his guilty plea.

Presentence investigation report

Jones argues that the district court relied upon incomplete and flawed information in the presentence investigation report. This court will not overturn a district court's sentencing order absent a showing of an abuse of discretion. Gaines v. State, 116 Nev. 359, 364, 998 P.2d 166, 169 (2000). Notably, Jones does not argue that the district court abused its discretion in considering the presentence investigation report. Rather, he complains that the report does not reference his school records that suggest possible mental and physical health issues. However, Jones presented that information to the district court in his sentencing memorandum. Thus, the challenged information was before the district court for its consideration in imposing Jones's sentence.

Jones also complains that the presentence investigation report process is inadequate and antiquated because it fails to account for differences between adults and youths. Jones does not specify how the process fails to account for those differences. NAC 213.590 requires that every convicted person be evaluated using a Probation Success Probability form and that the form will consider, among other things, "the age and education of the [defendant]." NAC 213.590(q). Further, Jones's sentencing memorandum included extensive argument as to why his youth should be considered as a mitigating factor in favor of a sentence of

a term of years rather than life in prison. Although he is unhappy with the manner in which his presentence report was prepared, Jones failed to demonstrate that the district court abused its discretion in considering the presentence investigation report in sentencing him.

#### Constitutionality of the sentence

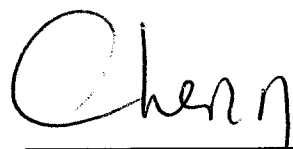
Jones argues that because he was only 15 years old at the time he committed the murder, a life sentence with a possibility of parole constitutes cruel and unusual punishment in violation of both the Nevada and United States Constitutions. U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. We disagree. A sentence that is within the statutory limits “will not be considered cruel and unusual punishment unless it is so disproportionate to the crime that it shocks the conscience and offends fundamental notions of human dignity.” Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994), disapproved on other grounds by Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995). As NRS 200.030(5) establishes that a person convicted of second-degree murder may be imprisoned for either a life sentence or a maximum term of 25 years, and NRS 193.168 provides for a gang enhancement of an equal and consecutive term, Jones’s sentence was within the statutory limits. Further, the United States Supreme Court has approved a sentence of life imprisonment without the possibility of parole for juvenile offenders, a sentence more severe than that imposed upon Jones. See Roper v. Simmons, 543 U.S. 551, 560 (2005). We therefore conclude that Jones’s

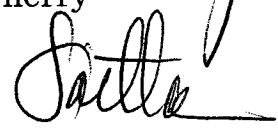
sentence does not violate the Nevada and United States Constitutions, and the appeal on this ground is denied.


Error in the judgment of conviction

We note an error in the judgment of conviction respecting Jones's conviction for conspiracy to commit second-degree murder with the use of a deadly weapon. In particular, the crime of conspiracy is not subject to a deadly weapon enhancement. Moore v. State, 117 Nev. 659, 663, 27 P.3d 447, 450 (2001). Accordingly, the deadly weapon enhancement must be vacated. We therefore

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court with instructions to vacate the sentence for the deadly weapon enhancement attendant to Jones's sentence for conspiracy.

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

  
\_\_\_\_\_, J.  
Saitta

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

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