IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHANIEL ORVILLE EVANS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51827

FILED

JAN 22 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 assault with a deadly weapon. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Nathaniel Orville Evans to a prison term of 12 to 60 months.

Evans' sole contention on appeal is whether the district court erred in denying his presentence motion to withdraw his guilty plea. Specifically, he claims that the district court erred in denying the motion that asserted that Evans was schizophrenic and was on Thorazine at the time of his plea. He asserted below that his condition and the medication prevented him from understanding the nature of the rights he waived with his guilty plea. He further contends that, because the motion filed by counsel was based on an assertion of mental illness and use of medication, the district court erred in relying, in part, on the grounds asserted in Evans' proper person letter to the court when denying his motion.

A defendant may file a motion to withdraw a guilty plea before sentencing. NRS 176.165. 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). In considering

whether a defendant has "advanced a substantial, fair, and just reason to withdraw a [guilty] plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently." Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001). Moreover, if the motion to withdraw is based on a claim that the guilty plea was not entered voluntarily, knowingly, and intelligently, the appellant has the burden to substantiate the claim. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings. NRS 177.045; Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000) (citing Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984)). "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, 102 Nev. at 272, 721 P.2d at 368).

We conclude that the district court did not abuse its discretion in denying Evans' presentence motion to withdraw his guilty plea. Evans signed a written plea agreement and was thoroughly canvassed by the district court. In the plea agreement and during the plea canvass, Evans acknowledged the constitutional rights he was waiving with his guilty plea. The transcript of the plea canvass reveals that Evans had a rational and factual understanding of the proceedings below and was able to appropriately respond to the district court's questions. Further, at the plea canvass, Evans denied that he was being treated for a mental illness

or taking any medication. While Evans asserted that jail staff revealed that he was being treated with Thorazine, he did not put forth any testimony or affidavits in support of this claim. Evans also admitted that he lied during the plea canvass about his mental health treatment, but also stated that he had been written up by jail staff for not taking his medication. The district court further noted that its review of the court services intake report did not indicate that Evans was being treated for a mental illness, and Evans denied any family history of substance abuse or mental illness in a previously filed substance abuse evaluation. Additionally, the district court stated that the fact that Evans had been employed weighed against a conclusion that his schizophrenia prevented him from understanding the proceedings. While the district court noted that Evans' letter to the court suggested an alternative basis for seeking to withdraw his plea, this was only a single factor amongst the aforementioned factors in the record that supported the district court's conclusion. Therefore, we affirm the denial of the motion to withdraw the guilty plea.

Having considered Evans' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk