

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANNY LEE WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

DANNY LEE WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 34776

**FILED**

AUG 18 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

No. 34777

ORDER DISMISSING APPEALS

Docket No. 34776 is an appeal from a judgment of conviction, pursuant to a guilty plea, of using and/or being under the influence of a controlled substance. The district court sentenced appellant to 12 to 48 months in prison. Docket No. 34777 is an appeal from a judgment of conviction, pursuant to a guilty plea, of carrying a concealed weapon. The district court sentenced appellant to 19 to 48 months, to be served concurrently with the sentence imposed in Docket No. 34776. Pursuant to a motion by appellant, this court consolidated these appeals. See NRAP 3(b).

Appellant contends that the district court abused its discretion in denying his presentence motions to withdraw his guilty pleas. Appellant argues that he was under the influence of medication when he pleaded guilty and that the medication adversely affected his ability to enter a knowing and voluntary plea. Appellant also argues that the district

court conducted an insufficient plea canvass to determine whether appellant was under the influence of any medication. Appellant therefore contends that the district court should have granted his motions to withdraw his guilty pleas. We disagree.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it is fair and just. *State v. District Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). On a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not entered knowingly and intelligently. See *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case. See id. at 271, 721 P.2d at 367; see also *Mitchell v. State*, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993). "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).

Whether a criminal defendant may plead guilty entails a two-part inquiry: (1) whether he is competent to enter a plea; and (2) whether the guilty plea is knowing and voluntary. *Godinez v. Moran*, 509 U.S. 389, 400-01 (1993). A defendant is competent to enter a plea if he has: (1) "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'"; and (2) "'a

rational as well as factual understanding of the proceedings against him.'" Id. at 396-97 (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)); see also Riker, 111 Nev. at 1325, 905 P.2d at 711. A plea is knowing and voluntary if the trial court satisfies itself that the defendant actually does understand the significance and consequences of his decision to enter the plea, such as waiving his right to a jury trial and the possible punishment faced, and that the plea is not coerced. See Godinez, 509 U.S. at 401 n.12.

During the plea canvass at appellant's arraignment on April 1, 1999, the district court questioned appellant as to whether he was under the influence of any medication. Appellant responded in the affirmative. The district court then asked what medication appellant was taking. Appellant responded that he was taking Diazepam and Sinequan to help him sleep. Upon further inquiry by the district court, appellant stated that he had taken the medication earlier in the morning and that he did not believe that the medication impaired his ability to understand his rights or the elements of the offenses.

At the evidentiary hearing on the motions to withdraw, Dr. Ole Thienhaus testified that he prescribed Doxepin<sup>1</sup> as a sedative for appellant when appellant was incarcerated at the Washoe County Detention Center. Thienhaus explained that Doxepin is an antidepressant that has sedating side effects and that he prescribed the drug for appellant at a dosage level that would be effective as a sedative, but not as an antidepressant. Thienhaus further explained that in addition to sedation, the side effects of Doxepin include:

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<sup>1</sup>Thienhaus explained that Sinequan and Doxepin are the same substance. Sinequan is just a trade name.

drying of the mouth, constipation, increase of the pressure inside the eye, and sometimes a slowing of the conduction of the heart that might cause changes in heart rhythms. Thienhaus testified that appellant never appeared to be delusional and that Doxepin does not induce delusions. Thienhaus also testified that in the dosages that appellant was taking, Doxepin would not impair a person's cognitive abilities and would not make a person unusually compliant or passive.

A nurse at the detention facility, Debra Kononchuk, also testified regarding observations she had made about appellant in completing a classification evaluation form on the same date as the arraignment. Kononchuk explained that she noted that appellant had a "detached affect" which meant that appellant appeared to be disinterested. Kononchuk also explained that she had noted that appellant had "bizarre/illogical" thought processes because appellant was saying things that did not "sound right" and that she marked the box for "delusional" thought processes and put a question mark by it because she believed that appellant was not really delusional was just trying to manipulate her. Kononchuk further testified that appellant did not have any cognitive difficulties understanding her questions and responded appropriately during the evaluation and that appellant was not demented, psychotic, or delusional.

Based on our review of the record, we conclude that appellant cannot demonstrate that the district court abused its discretion in denying appellant's motions to withdraw the guilty pleas. The district court stated that it had considered the entire record and the testimony and evidence presented at the evidentiary hearing in deciding to deny the motions. Appellant stated during the plea canvass that the

prescription medications did not impair his ability to understand the proceedings. The testimony presented at the evidentiary hearing also indicates that the medication that appellant was taking at the time he entered his guilty pleas would not have affected his cognitive abilities. Accordingly, we conclude that appellant failed to demonstrate that he was not competent to enter the guilty pleas or that the pleas were not knowingly and voluntarily entered. We therefore conclude that the district court did not abuse its discretion in denying appellant's motions to withdraw his guilty pleas and we

ORDER these appeals dismissed.<sup>2</sup>

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Janet J. Berry, District Judge  
Attorney General  
Washoe County District Attorney  
John E. Oakes  
Washoe County Clerk

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<sup>2</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.