

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MICHAEL TITUS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53029

**FILED**

MAR 11 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to modify sentence or in the alternative motion to withdraw guilty plea. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Craig Michael Titus claims that, because he detrimentally relied on assurances that he would receive an aggregate minimum sentence of 17 years when he entered his plea and his actual sentence resulted in an aggregate minimum of 21 years, the district court abused its discretion by denying his motion to withdraw his guilty plea.<sup>1</sup>

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<sup>1</sup>Appellant's appendix is deficient because it does not include all documents required by NRAP 30(b) or provide this court with sufficient documents to review the issues raised on appeal. See NRAP 3C(e)(2). Nevertheless, we are able to review the issues raised because the necessary documents were provided in respondent's appendix. We remind counsel that appellant has the duty to provide this court with an adequate record to review the issues raised on appeal, see Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004), and we caution counsel that future failure to comply with the requirements of NRAP 3C may result in the imposition of sanctions by this court, see NRAP 3C(n).

We “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.” Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court conducted an evidentiary hearing and found that the sentencing possibilities were delineated in the plea agreement that Titus read, reviewed with counsel, and signed and that the court did not make any promises regarding Titus’ sentences. Reviewing the totality of the circumstances, we conclude that the district court’s findings are supported by the record and Titus failed to demonstrate a manifest injustice that would warrant withdrawal of his guilty plea. See NRS 176.165; Bryant, 102 Nev. at 272, 721 P.2d at 368. Therefore, we conclude the district court did not abuse its discretion by denying the motion to withdraw the guilty plea. To the extent Titus challenges the district court’s denial of the motion to modify his sentence, we conclude the district court did not abuse its discretion because the issue raised fell outside the scope of claims permissible in such a motion. See Edwards v. State, 112 Nev. 704, 708-09 & n.2, 918 P.2d 321, 324-25 & n.2 (1996).

Titus next claims that his plea is invalid because the State committed prosecutorial misconduct and breached the plea agreement by arguing facts not in evidence at the sentencing hearing. We note that this is not an appeal from the judgment of conviction and Titus did not assert this claim as a basis for withdrawing his plea in the district court. Therefore, this issue is improperly raised for the first time on appeal. Accordingly, we decline to consider this issue.

Having concluded that Titus' claims either lack merit or are not properly raised, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Michael H. Schwarz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk