

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN EDWARD HORTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53081

FILED

JUN 22 2009

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 appellant Dustin Edward Horton's post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On February 7, 2008, Horton was convicted, pursuant to a guilty plea, of two counts of burglary, two counts of possession of stolen property, and two counts of obtaining money under false pretenses. The district court sentenced Horton to serve various concurrent and consecutive prison terms totaling 48 to 180 months. Horton's direct appeal is currently pending in this court. See Horton v. State, Docket No. 51248.

On October 23, 2008, Horton, with the assistance of counsel, filed a post-conviction motion to withdraw his guilty plea in the district court. The State opposed the motion. The district court heard argument and denied the motion. This appeal followed.

Horton contends that the district court abused its discretion by denying his post-conviction motion to withdraw his guilty plea. Horton specifically claims that he did not sign the written plea agreement and

that the submission of this document to the district court constituted fraud in the execution and rendered the agreement contained therein void. Horton asserts that the fact that he did not sign the plea agreement supports "his contention that he did not understand the full penal consequences of his plea because he did not actually review the agreement." Horton concedes that the plea canvass appears to have been properly conducted and that he did represent to the district court that he had read and understood the plea agreement, but argues that "he was simply being cued to respond to the court in a fashion that would ensure he would receive the erroneous negotiations relayed to him by his trial counsel."

"To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea." NRS 176.165. In determining whether a manifest injustice has occurred, the court should consider whether the defendant acted voluntarily, understood the nature of the charges against him, and understood the consequences of his plea. See Wilson v. State, 99 Nev. 362, 372-73, 664 P.2d 328, 334-35 (1983). "On appeal from the district court's determination, we 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." Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994).

During the hearing on Horton's motion to withdraw his guilty plea, the district court observed that when it canvassed Horton as to whether he had read the plea agreement and fully understood all of its contents before signing it, he responded "yes, ma'am." The district court

determined that the allegations in Horton's motion were belied by the record; the guilty plea agreement and transcript from the entry of plea demonstrated that the plea was freely, voluntarily, and knowingly entered; and Horton had not made a showing of manifest injustice. We note that the record on appeal supports the district court's determinations, and we conclude that Horton has not shown that the district court clearly abused its discretion by denying his motion to withdraw his guilty plea.

Horton also contends that the district court abused its discretion by failing to conduct an evidentiary hearing on the issue of whether he actually signed the written plea agreement.

"This court has long recognized a petitioner's right to a post-conviction evidentiary hearing when petitioner asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). "A claim is 'belied' when it is contradicted or proven false by the record as it existed at the time the claim was made." Id.

Horton's claim that he did not sign the written plea agreement is belied by the transcript of the district court's plea canvass, in which the following colloquy was recorded:

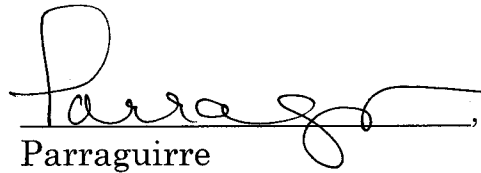
THE COURT: You have signed the written guilty plea agreement on page 5. Did you thoroughly read it and fully understand all of its contents before signing it?

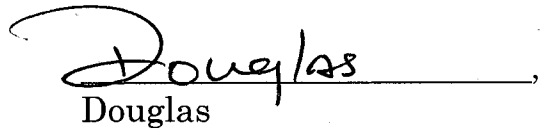
THE DEFENDANT: Yes, ma'am.

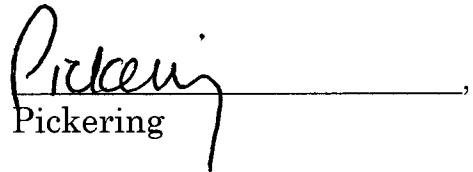
Given this circumstance, Horton was not entitled to an evidentiary hearing and the district court did not abuse its discretion by not conducting one.

Having considered Horton's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Valorie Vega, District Judge
Oswaldo E. Fumo, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk