

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIA MOJICA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53452

FILED

DEC 03 2009

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

ORDER OF AFFIRMANCE

This an appeal from an order of the district court denying appellant Maria Mojica's post-conviction motion to withdraw her Alford plea. See North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On February 4, 2008, the district court convicted Mojica pursuant to an Alford plea of one count of assault with a deadly weapon and one count of accessory to murder. The district court sentenced Mojica to serve two consecutive prison terms of 24 to 60 months. Mojica did not file a direct appeal.

Mojica filed two motions to withdraw her Alford plea.¹ The State opposed the motions. The district court heard argument and subsequently denied the motion.

On appeal, Mojica contends that the district court abused its discretion by denying her post-conviction motion to withdraw her Alford

¹In response to a faxed request, the district court took the first motion off of its calendar.

plea.² Mojica claims that she informed defense counsel that she would accept the State's offer and plead guilty to accessory to murder after the fact. However, at calendar call, she learned that defense counsel had not accepted the offer and that the offer was no longer available. She further learned that she was being represented by defense counsel's associate. The associate was not prepared for trial, the district court did not grant a continuance, and the associate advised her to accept an offer that carried a potentially longer sentence. Mojica argues that under these circumstances she did not have the requisite state of mind to voluntarily, knowingly, and intelligently enter the Alford plea.

We conclude that Mojica is not entitled to relief. "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,

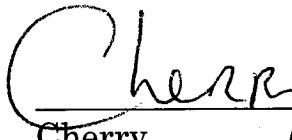
²We note that the fast track statement is not in the required form and the procedural history and fact sections in the fast track statement do not contain any citations to the record. See NRAP 3C(e); NRAP Form 6; NRAP 3C(e)(2) ("Every assertion in the fast track statement regarding matters in an appendix shall cite to the page of the appendix that supports that assertion."). We caution counsel that in the future, such disregard for the rules of this court may result in the striking of the fast track statement or the imposition of sanctions. See NRAP 3C(n).

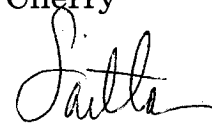
721 P.2d 364, 368 (1986), holding limited on other grounds by Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994).


Here, the district court failed to include specific findings of fact and conclusions of law in its order denying Mojica's motion to withdraw her plea. See NRAP 4(b)(2). However, based on our review of the record on appeal, particularly the written plea agreement and the transcript of the oral plea canvass, we conclude that Mojica acted voluntarily, understood the nature of the charges against her, and understood the consequences of her plea. Moreover, Mojica's claim that the State had previously offered her a chance to plead guilty to accessory to murder is belied by the record. The record shows that prior to a calendar call the State had discussed possible offers with defense counsel but had not made a specific offer. Under these circumstances, Mojica has not shown manifest injustice nor has she demonstrated that the district court clearly abused its discretion by denying her motion to withdraw the Alford plea.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David B. Barker, District Judge
Leslie A. Park
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk