

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH CUNDIFF A/K/A
WILLIAM CUNDIFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53978

FILED

MAR 11 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his motion filed on May 7, 2009, appellant challenged the validity of his guilty plea. A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

Appellant claimed that he believed that he would receive a sentence of 2 to 15 years with probation and was not informed that he could receive a greater sentence. Appellant failed to carry his burden of demonstrating that his plea was invalid. Appellant was informed in the written plea agreement and during the plea canvass of the sentencing range and that sentencing decisions were left in the discretion of the district court. Therefore, we conclude that the district court did not err in denying this claim.

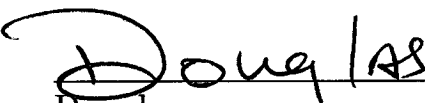
Next, appellant claimed that his plea was invalid because he was unable to understand the proceedings due to the fact that he was taking medication. Appellant failed to carry his burden in this regard. Appellant failed to demonstrate by a preponderance of the evidence that he had a mental impairment that rendered him incompetent during the proceedings. See Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (holding that the test for determining competency is “whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him” (quoting Dusky v. United States, 362 U.S. 402 (1960))). Appellant answered all questions put to him appropriately. Therefore, we conclude that the district court did not err in denying this claim.

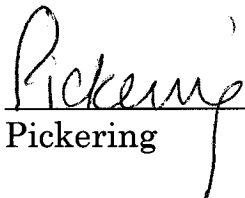
Next, he claimed that his trial counsel’s ineffective assistance rendered his guilty plea invalid. He claimed that trial counsel failed to explain things, told him that his story would not stand up in court, did not tell him the deal may not be followed by the district court, and failed to

tell the district court that he was not using his medication at the time of the crime. Appellant failed to demonstrate that his trial counsel was ineffective. Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Appellant was informed in the written guilty plea agreement of the potential sentences, the waiver of constitutional rights, the elements of the crime, and that sentencing decisions were left to the discretion of the district court. Appellant acknowledged that trial counsel had discussed the case with him. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
William Joseph Cundiff
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk