

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA CARY MYERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56489

FILED

MAR 17 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of first-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Joshua Cary Myers contends that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. A district court may grant a presentence "motion to withdraw a guilty plea . . . for any substantial, fair, and just reason," Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001); see Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); see also NRS 176.165, and we will review the district court's ruling for an abuse of discretion, Crawford, 117 Nev. at 721, 30 P.3d at 1125. Here, Myers argues that the district court abused its discretion in two ways: (1) by concluding that his plea was voluntary and (2) by relying on two factual inaccuracies.

As to Myers' voluntariness claim, he specifically complains that his guilty plea was involuntary on three grounds: (1) counsel intimidated and bullied him into pleading guilty, (2) he entered his plea without the benefit of meaningful defense investigation, and (3) prescribed

psychotropic drugs affected his ability to focus and comprehend the proceedings when he entered his plea.

As to Myers' first contention, evidence introduced at the evidentiary hearing on the motion showed that during two meetings, Myers' counsel pounded the table and "yelled" at Myers after counsel had repeatedly explained to him that a self-defense theory was not viable. Additionally, those two meetings ended amicably and transpired before plea negotiations commenced. Counsel and the defense investigator testified that they advised Myers that the decision to plead guilty was his. Further, Myers denied any coercion during the plea canvass.

As to Myers' second assertion, he raises a vague, perfunctory claim that no investigation was completed before he pleaded guilty. Absent from Myers' claim is any explanation of what investigation should have been conducted or how any information discovered would have affected his decision to plead guilty.

Turning to Myers' third contention, a psychiatrist and two nurses testified during the evidentiary hearing that the medication Myers took for anxiety and depression did not typically cause a loss of cognitive abilities and that their interaction with him revealed no signs of cognitive difficulties resulting from the medication. Additionally, nothing in counsel's or the defense investigator's communications with Myers suggested that he did not understand their discussions or the proceedings. Further, during the plea canvass, Myers denied any cognitive difficulties resulting from the medication.

Based on the record, we conclude the district court properly assessed the validity of the plea, see Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (noting that on appeal, this court will presume

that the district court properly assessed the plea's validity and will not reverse that decision absent a clear abuse of discretion), and did abuse its discretion in denying Myers' motion to dismiss on the grounds asserted.

As to Myers' claim that two factual inaccuracies influenced the district court's decision, he contends that the district court erred by finding that (1) there was undue delay between the time Myers entered his guilty plea and sought to withdraw his plea and (2) he failed to claim actual innocence of the murder charge.


Regarding Myers' first contention, he argues that six days after entering his plea he submitted a prison kite to the jail's court services division requesting a "change of plea hearing" and new counsel. During a hearing related to Myers' motion to renew or reconsider his motion to withdraw his guilty plea, the district court learned of the prison kite and expressed that it was "disturbed" by that omission. However, the district court explained that the kite did not "change the Court's position." Additionally, the district court based its denial of Myers' motion to withdraw his plea on several additional factors. We therefore conclude that the district court did not abuse its discretion in this regard.

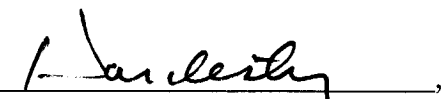
As to Myers' second assertion, he contends that the district court erroneously found that he failed to claim actual innocence of the murder charge. In denying Myers' motion, the district court considered several factors enumerated in the Fifth Circuit Court of Appeals' decision in United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984), including whether the defendant asserted his innocence. However, this court has observed that "[t]he question of an accused's guilt or innocence is generally not at issue in a motion to withdraw a guilty plea." Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). During the evidentiary hearing,

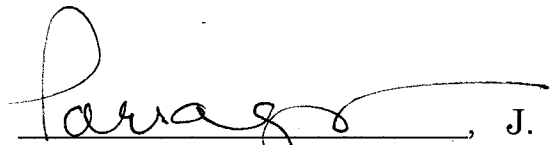
Myers announced that he had a new defense theory that would reduce the first-degree murder charge but declined to explain the new defense, stating, "That's all I can say about that." Even assuming Myers' innocence claim is an appropriate factor to consider, he provided no support upon which the district court could assess that factor. See Carr, 740 F.2d at 344 (stating that mere assertion of innocence claim is insufficient to overturn denial of withdrawal motion). Further, the district court considered several additional factors in denying the motion. Consequently, we conclude that no relief is warranted in this regard.

Having considered Myers' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Stiglich & Hinckley, LLP
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk