

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN VASCUS NELSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35310

FILED

JUN 12 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of challenge to fight with the use of a deadly weapon. The district court sentenced appellant to thirteen (13) to sixty (60) months in prison.

Appellant contends that the district court erred by denying appellant's pre-sentence motion to withdraw his guilty plea. Specifically appellant argues that he was under the effects of six different prescribed medications when he entered his plea, and that he presented a credible claim of factual innocence.

"[W]hen a defendant brings a motion to withdraw a guilty plea, the trial court has a duty to review the entire record to determine whether the plea was valid." Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993). "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).

Appellant's claim that he was under the influence of various medications is belied by the jail medication log that shows he was taking, at most, one prescription medication on the day he entered his plea. The district court found that appellant did not appear to be suffering from any mental impairment at the time he entered his plea. Moreover, appellant specifically stated at the entry of his plea, and in the signed plea agreement memorandum, that he was not under the influence of any drugs. We therefore conclude that the district court did not abuse its discretion by denying the motion to withdraw on this ground.

In Mitchell, this court held that it was an abuse of discretion for the district court to deny a pre-sentence motion to withdraw a guilty plea where the defendant presented a credible claim of factual innocence. 109 Nev. at 141, 848 P.2d at 1062. Here, appellant was observed approaching the victim yelling, "I want my money!" and waving a knife at the victim. As the victim attempted to walk away, appellant stabbed the victim in the back and a fight ensued between appellant and the victim. Appellant claims that the victim was dealing in drugs and that appellant was working with the U.S. Marshal Service in building a case against the victim. The Division of Parole and Probation contacted the U.S.

Marshal's Office and was told that they had never heard of appellant. We conclude that appellant has not presented a credible claim of factual innocence. Moreover, appellant stated at the entry of his plea and in the plea agreement memorandum that he had discussed any possible defenses with his attorney. Appellant further stated that he did, in fact, commit the crime charged. Accordingly, we conclude that the district court did not abuse its discretion by denying the motion to withdraw on this ground.

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

ORDER this appeal dismissed.

<u>Young</u> Young	J.
<u>Agosti</u> Agosti	J.
<u>Leavitt</u> Leavitt	J.

cc: Hon. Archie E. Blake, District Judge
Attorney General
Lyon County District Attorney
Law Office of Kenneth V. Ward
Lyon County Clerk