

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLEN SCRUGGS A/K/A GLENN  
MARIO SCRUGGS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58097

**FILED**

APR 11 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of robbery. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant Glen Scruggs argues that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea because he did not fully understand the written plea agreement and the consequences of his plea. Specifically, he contends that the district court failed to canvass him about the range of punishments that could be imposed, and he was unaware that he could be sentenced under the large habitual offender statute and that the district court had discretion to determine his sentence. At the plea canvass, Scruggs acknowledged that his plea was freely and voluntarily entered, that he had read and understood the plea agreement, and that he believed the guilty plea to be in his best interest. The written guilty plea agreement specifically informed Scruggs of the potential sentences available, including possible sentences under the small and large habitual criminal statutes, and that the district court had discretion to determine his sentence and was not obligated to accept any sentence recommended by the State. Considering

the totality of the circumstances, we conclude that the district court's plea canvass, coupled with the written plea agreement, demonstrates that the plea was knowingly and voluntarily made. See State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); see also Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986), superseded by statute on other grounds as stated in Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000). Thus, the district court did not clearly abuse its discretion by denying Scruggs's motion to withdraw his guilty plea. See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Scruggs further contends that the district court erred by allowing the State to argue for large habitual criminal treatment at sentencing because the language of the plea agreement was confusing and the State stipulated to small habitual criminal treatment. The written guilty plea agreement provided that the State agreed to recommend a small habitual sentence, but this recommendation was contingent on Scruggs's appearance in court on the initial sentencing date. The plea agreement further informed Scruggs that if he failed to appear at the scheduled sentencing hearing, the State would regain the full right to argue for any lawful sentence. Scruggs failed to appear at his initial sentencing hearing and was subsequently arrested in Wisconsin on a bench warrant. Thus, his failure to appear at sentencing resulted in a breach of the plea agreement and provided the State with the discretion to argue for a large habitual criminal sentence. See Sparks v. State, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (noting that a defendant who signs a written plea agreement with a failure to appear clause "should have reasonably expected that his failure to appear at the first sentencing hearing . . . would cause the State to invoke the right to argue").

Having considered Scruggs's arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Valorie J. Vega, District Judge  
The Almase Law Group LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk