

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN THORPE CHRISTIE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58696

**FILED**

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction motion to withdraw his guilty plea. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On appeal from the denial of his September 3, 2008, motion, appellant argues that the district court abused its discretion by denying his motion to withdraw his guilty plea. The district court may grant a post-conviction motion to withdraw a guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. A guilty plea is presumptively valid, and the defendant has 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). To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case. State v. Freese, 116 Nev. 1097, 1105-06, 13 P.3d 442, 448 (2000). This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Bryant, 102 Nev. at 272, 721 P.2d at 368.

First, appellant argues that the district court violated the "spirit" of the plea agreement when the district court changed the plea

agreement to allow the State to argue for habitual criminal adjudication at sentencing, and the State violated the plea agreement by seeking habitual criminal treatment at sentencing. Both of these claims are based on a contention that the striking of a provision from the amended plea agreement in the middle of the plea canvass was a violation of contract principles. This court considered and rejected appellant's challenge to the validity of his guilty plea in his appeal from an order denying his post-conviction petition for a writ of habeas corpus, concluding that the record belied appellant's claim that he was unaware that he faced habitual criminal adjudication when he entered his guilty plea pursuant to the amended plea agreement. Christie v. State, Docket No. 56430 (Order of Affirmance, June 8, 2011). Thus, to the extent that appellant contends that the habitual criminal adjudication was a breach of the amended plea agreement, the doctrine of the law of the case bars further consideration of this claim. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) (stating that the law of the case cannot be avoided by "a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings"); see also Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

Moreover, we conclude that these claims are clearly belied by the record. After appellant breached the original plea agreement by failing to appear at sentencing, the State announced that it would seek habitual criminal treatment. The district court expressed concern about sentencing appellant as a habitual criminal because the plea agreement did not inform appellant of the possible sentences he faced under the habitual criminal enhancement. When the State indicated that it would instead withdraw the agreement and prosecute appellant on all charges,

including the habitual criminal enhancement, appellant consulted with counsel and agreed to proceed under an amended plea agreement that informed him of the habitual criminal penalties.

The district court thoroughly canvassed appellant about his decision to plead guilty pursuant to the amended plea agreement. During the canvass, appellant told the court that he wanted “to leave the habitual in your discretion and not go to trial on those other charges” and that he understood that the State “can now seek the habitual criminal because I failed to appear at my sentencing date.” Upon noticing that the amended plea agreement still contained a provision stating that the State would dismiss the habitual criminal enhancement, the district court struck that provision from the agreement. The district court explained the change to appellant, appellant’s counsel initialed the change, and appellant affirmed his understanding that the State would not be dismissing the habitual criminal enhancement and would be able to argue in favor of it. Thus, the record clearly shows that, when the parties entered into the amended plea agreement, they did so with the understanding that the State would be able to argue habitual offender adjudication at sentencing. Appellant’s arguments to the contrary are without merit.

Next, appellant argues that the plea agreement did not contain a certificate of counsel, as mandated by NRS 174.063(2), and thus was a violation of his rights to due process and representation by counsel. We conclude that the district court did not abuse its discretion by denying this claim because appellant failed to demonstrate the existence of manifest injustice. Counsel stated during the plea hearing that he had gone over the amended plea agreement with appellant, and appellant affirmed that he had talked about the agreement with counsel and did not

have any questions. In light of this record, appellant failed to show that the absence of a certificate of counsel rendered his plea unknowing or unintelligent. To the extent that appellant argues that the lack of a certificate demonstrates that counsel did not advise appellant of the consequences of pleading guilty, this court rejected this underlying ineffective-assistance argument on appeal from the denial of his post-conviction petition for a writ of habeas corpus. Christie v. State, Docket No. 56430 (Order of Affirmance, June 8, 2011). This court's prior determination is the law of the case and bars further argument on this issue. Hall, 91 Nev. at 316, 535 P.2d at 799; see also Pellegrini, 117 Nev. at 879, 34 P.3d at 532.

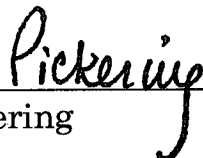
Finally, appellant argues that he was not aware that probation was unavailable in the event that he was sentenced as a habitual criminal. This argument is belied by the record. See Little v. Warden, 117 Nev. 845, 851-53, 34 P.3d 540, 544-45 (2001) (holding that a guilty plea is not invalid where the totality of the circumstances shows that defendant knew probation was not an option). While the amended plea agreement did not explicitly state that probation was unavailable, the agreement provided that habitual criminal adjudication carried a minimum sentence of 25 years in prison with parole eligibility after 10 years. Appellant stated during the plea canvass that he understood that there were three possible sentences if he were adjudicated a habitual criminal, all of which involved terms in prison. Furthermore, appellant's testimony at the evidentiary hearing on his post-conviction habeas petition demonstrated that he was aware that a habitual criminal sentence would result in prison time and that counsel told him that he would not receive probation. Thus, it is clear from the totality of the

circumstances that appellant was aware that probation was not an option under habitual criminal treatment.

For the foregoing reasons, we conclude that appellant has not demonstrated that the district court abused its discretion by denying his motion to withdraw his guilty plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Connie J. Steinheimer, District Judge  
Janet S. Bessemer  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk