

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59957

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE


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

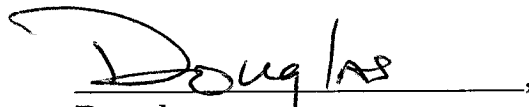
Dunckley argues that he did not knowingly and intelligently plead guilty because he erroneously believed that probation was a possible sentence when it was not as a matter of law under NRS 201.230(2) as it existed at the time of his offense. See 1997 Nev. Stat., ch. 641, § 19, at 3190.¹ Dunckley is mistaken. Having reviewed the statute, we conclude that probation was available as a possible sentence at the time of his offense through NRS 176A.110(3)(j). See 1997 Nev. Stat., ch. 524, § 7, at 2504-05. Moreover, at all times throughout these proceedings the district court, the State, Dunckley, and even this court, believed and operated as if


¹The amended information contained allegations that Dunckley committed lewdness with a child under the age of fourteen years, a violation of NRS 201.230, on or between August 14, 1998, and August 13, 2000.

probation was a possibility under the statute and Dunckley would have received probation had the district court found that it was appropriate. Because Dunckley's belief that probation was a possible sentence was not erroneous, we conclude that the district court did not abuse its discretion in denying his motion. Crawford v. State, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001) ("When reviewing a district court's denial of a motion to withdraw a guilty plea, this court presumes that the district court properly assessed the plea's validity, and we will not reverse the lower court's determination absent abuse of discretion."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk