

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANDRE MORRISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60199

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Inopod
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of carrying a concealed firearm or other deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant Michael Andre Morrison contends that the district court erred by denying his presentence motion to withdraw his guilty plea because it was a product of ineffective assistance of counsel and a coercive environment. "This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion." Johnson v. State, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007). Here, the record reveals that (1) Morrison acknowledged in the written plea agreement that defense counsel fully explained the negotiations to him, he was not acting under duress or coercion, and he was satisfied with the services provided by defense counsel; (2) the district court conducted a plea canvass during which Morrison acknowledged that he understood the negotiations, discussed the negotiations with defense counsel, and entered his plea freely and voluntarily; and (3) the district court did not participate in the formulation or discussion of any potential plea agreement. We conclude that Morrison has failed to demonstrate that the

district court abused its discretion by denying his presentence motion to withdraw his guilty plea. See Cripps v. State, 122 Nev. 764, 770, 137 P.3d 1187, 1191 (2006) (prohibiting “judicial participation in the formulation or discussions of a potential plea agreement”); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of proving that plea is invalid); Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001) (“A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.”).


Morrison also contends that the district erred by denying defense counsel’s written and oral motions to withdraw as attorney of record because defense counsel was ineffective and conflicted.¹ A criminal defendant has a Sixth Amendment right to counsel who is reasonably competent and conflict-free. Daniels v. Woodford, 428 F.3d 1181, 1196 (9th Cir. 2005). To overcome the presumption that defense counsel is reasonably competent, a defendant must show that counsel’s representation was unreasonable under the prevailing professional norms. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). To establish a violation of the right to conflict-free counsel, a defendant must show “that an actual conflict of interest adversely affected his lawyer’s performance.” U.S. v. Moore, 159 F.3d 1154, 1157 (9th Cir. 1998) (internal quotation marks omitted); see Carter v. Armontrout, 929 F.2d 1294, 1300 (8th Cir. 1991) (explaining that a pending lawsuit between a defendant and defense counsel “may give rise to a conflict of interest,” but the defendant “does not

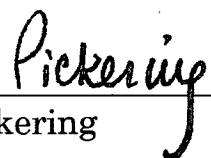
¹Neither motion purports to be a motion to substitute counsel. See generally Young v. State, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004).

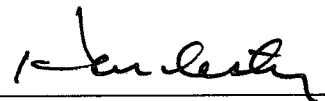
necessarily create such a conflict” merely by filing the lawsuit). Here, the record reveals that the district court made inquiries during the pendency of both motions and there was no showing that defense counsel’s representation was unreasonable or that Morrison’s lawsuit created an actual conflict of interest. Accordingly, we conclude that Morrison has failed to demonstrate that the district court erred by denying defense counsel’s motions to withdraw as attorney of record.

Having considered Morrison’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


Saitta _____, J.


Pickering _____, J.


Hardesty _____, J.

cc: Chief Judge, Eighth Judicial District Court
Monique A McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk