

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOYD JAMES BARKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35590

FILED

FEB 07 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to an Alford¹ plea, of two counts of sexual assault of a child under the age of fourteen years. The district court sentenced appellant to serve two consecutive terms of life in prison with the possibility of parole after 20 years. Pursuant to NRS 34(f)(1), we have determined that oral argument is not warranted in this appeal.

Appellant contends that the district court erred in denying his presentence motion to withdraw his Alford plea. In particular, appellant argues that his plea is invalid because (1) he entered it involuntarily after trial counsel said he would not defend appellant, and (2) the district court failed to resolve the conflict between appellant's waiver of his right to a trial and his claim of innocence. We conclude that appellant's contention lacks merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it is fair and just.² On a motion to withdraw a guilty plea, the defendant has the burden of

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²See State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

showing that his guilty plea was not entered knowingly and intelligently.³

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.⁴ "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court '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.'"⁵ Based on our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying the motion.

First, we conclude that appellant failed to demonstrate that he entered the plea involuntarily due to comments allegedly made by counsel. Trial counsel testified that he never told appellant that he would not represent appellant. Rather, trial counsel simply informed appellant that the State had a strong case and that he did not have a viable defense. Trial counsel nonetheless assured appellant that he would represent appellant at trial if appellant chose to go to trial. We conclude that trial counsel's advice did not coerce appellant into pleading guilty involuntarily. We therefore conclude that the district court did not abuse its discretion in denying the presentence motion to withdraw on this ground.

Second, we conclude that the district court's failure to expressly reconcile the conflict between appellant's waiver of his right to trial and his claim of

³See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

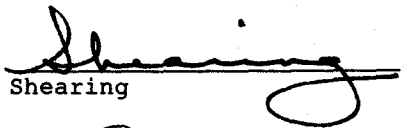
⁴See id.

⁵Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

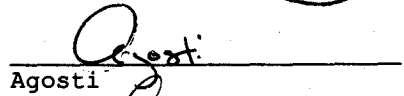
innocence does not alone render the plea invalid. Appellant is correct that when accepting an Alford plea, the trial court should inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.⁶ However, the purpose behind requiring inquiry into the reason for the plea is to "protect[] the innocent and . . . insur[e] that guilty pleas are a product of free and intelligent choice."⁷ We have always looked to the totality of the circumstances in evaluating the validity of a guilty plea.⁸ The totality of the circumstances in this case demonstrates that appellant entered a knowing and voluntary guilty plea. We therefore conclude that the district court did not abuse its discretion in denying the presentence motion to withdraw the plea on this ground.

Having considered appellant's contentions and concluded that they lack merit, we

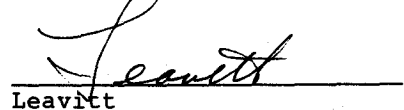
ORDER the judgment of conviction AFFIRMED.


Shearing

J.


Agosti

J.


Leavitt

J.

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

⁶See Alford, 400 U.S. at 38 n.10; Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

⁷Id.

⁸See Bryant, 102 Nev. 268, 721 P.2d 364.