

IN THE SUPREME COURT OF THE STATE OF NEVADA

TACUMA JAWANZA MWANZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62781

FILED

JAN 21 2014

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

ORDER OF AFFIRMANCE

This is an appeal under NRAP 4(c) from a judgment of conviction, pursuant to a guilty plea, of possession of a firearm by a felon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, appellant argues that the district court erred by denying his presentence motion to withdraw his guilty plea as he felt pressured to plead guilty and did not understand the consequences of his plea. NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just. *State v. Second Judicial Dist. Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). "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.'" *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

The district court concluded that, under the totality of the circumstances, appellant's plea was voluntarily and knowingly entered.

See Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001). Appellant claims that his attorneys pressured him to take the plea deal by telling him that he had a no-win case and that he would be subject to habitual criminal treatment. It is not improper for counsel to inform the client of the prosecutor's intent; indeed, it is the role of counsel to provide the client with full and frank advice concerning the potential consequences of both a trial and a plea bargain. We are unconvinced by appellant's arguments that pressure is implicit from his second counsel's motion to withdraw as attorney of record or that the district court threatened him with trial.

Furthermore, during the plea canvass when appellant stated that he felt he had no choice but to enter into the negotiations, the district court corrected him, informing him that he had the choice of accepting the negotiations or going to trial on all the charges. The district court indicated that, based on appellant's statements, it would not accept his plea and asked counsel if she wanted to speak with her client, after which appellant chose to plead guilty and indicated that he was entering his plea freely and voluntarily. *See McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) (providing that the ultimate decision to plead guilty lies with the defendant). Appellant signed a written plea agreement that informed him of the consequences of his plea, including his stipulation to adjudication as a habitual criminal, and the district court thoroughly canvassed appellant regarding his plea and the possible punishments he faced. *See Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537-38 (2004) ("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." (internal quotation marks

omitted)). Appellant fails to demonstrate that the district court abused its discretion by denying his presentence motion to withdraw the guilty plea.

To the extent appellant argues that his guilty plea was the product of ineffective assistance of counsel because counsel failed to investigate and litigate a motion to suppress the firearm based on an invalid stop, this claim was not made in appellant's motion to withdraw guilty plea, and we decline to consider the claim for the first time on appeal. *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995) (holding that claims of ineffective assistance of counsel should be raised in post-conviction proceedings in the district court in the first instance and are generally not appropriate for review on direct appeal).


Second, appellant argues that the district court abused its discretion in sentencing appellant as a habitual criminal because his prior convictions were stale and trivial and because the decision did not take into account his rehabilitated state nor serve the interests of justice. The district court has broad discretion to dismiss a count of habitual criminality. *See* NRS 207.010(2); *O'Neill v. State*, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). Our review of the record reveals that the district court understood its sentencing authority, and we conclude that the district court did not abuse its discretion by adjudicating appellant a habitual criminal. *See Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000); *see also Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions."). While appellant likened his prior convictions to those in *Sessions v. State*, 106 Nev. 186, 789 P.2d 1242 (1990) (concluding that the district court's adjudication of defendant as a habitual criminal was an abuse of discretion as the prior convictions

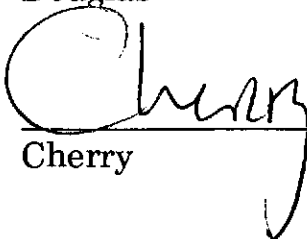
ranged from 23 to 30 years old and were for nonviolent crimes), the district court distinguished appellant's case as appellant's prior convictions, incurred between 1981 and 2001, and subsequent non-felony convictions¹ demonstrated a continuation of criminal conduct.

Third, appellant argues that, if individual error is not enough to reverse, the cumulative effect of errors by trial counsel and the district court warrants reversal. Because appellant failed to demonstrate any error, he necessarily failed to demonstrate there was cumulative error. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

¹We are unconvinced by appellant's argument that it was improper for the State to argue, and the district court to consider, the relevancy of appellant's criminal history, including arrests and negotiated convictions, as the district court may consider facts such as criminal history in determining whether to dismiss a count of habitual criminality. *O'Neill*, 123 Nev. at 16, 153 P.3d at 43.

cc: Hon. Michael Villani, District Judge
Langford McLetchie LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk