IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VANCE EVANS MCGEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66802



*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a post-conviction motion to withdraw guilty plea or modify sentence.[1, 2] Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

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[1]This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[2]In *Harris v. State*, the Nevada Supreme Court clarified that a defendant who wishes to withdraw his plea after sentencing must file a post-conviction petition for a writ of habeas corpus. 130 Nev. ___, ___, 329 P.3d 618, 628 (2014). Appellant's motion was filed after *Harris* was announced and did not conform with the provisions of NRS 34.735. The district court did not require appellant to cure any defects, nor does it appear that the court considered the procedural requirements of NRS Chapter 34 as mandated by *Harris*. We note, however, that the motion would have met all procedural requirements of NRS Chapter 34 if construed as a petition for a writ of habeas corpus. Therefore, in the interest of judicial economy, we decline to remand to the district court to consider the procedural requirements of NRS Chapter 34, and we reach the merits of appellant's claims on appeal.

In his August 21, 2014, motion, appellant claimed that his plea was not knowingly and intelligently entered because, although he agreed to plead guilty to a gross misdemeanor offense, the prosecutor changed the terms of the plea agreement without his knowledge to include a felony and increased the amount of marijuana he possessed.[3]

The district court may allow a defendant to withdraw his plea after sentencing to correct a manifest injustice, NRS 176.165, which includes pleas that are not knowingly and voluntarily entered, *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). "A guilty plea is knowing and voluntary if the defendant has a full understanding of both the nature of the charges and the direct consequences arising from a plea of guilty." *Rubio*, 124 Nev. at 1038, 194 P.3d at 1228 (internal quotation marks and emphasis omitted). We presume that the district court correctly assessed the validity of the plea and will not reverse its decision absent an abuse of discretion. *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

The district court correctly concluded that appellant failed to establish a basis for withdrawing his plea. The record does not demonstrate that anyone changed the terms of the plea without appellant's knowledge. Pursuant to the terms of the plea agreement,

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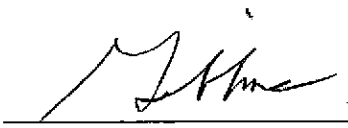
[3]To the extent that appellant asserted that his sentence should be modified, the district court did not err by denying this claim. Appellant did not demonstrate, or even allege, that his sentence was "based on mistaken assumptions about [his] criminal record which work to [his] extreme detriment." *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

appellant agreed to plead guilty to a fictitious count of attempted possession of a controlled substance. The offense was charged as a "wobbler" that could be treated as either a Category E felony or a gross misdemeanor, *see* NRS 193.330(1)(a)(6), NRS 453.336(2)(a); however, the parties stipulated that appellant would be convicted of the gross misdemeanor offense and sentenced to 6 months in jail. During the plea canvass, appellant disagreed that he attempted to possess more than one ounce of marijuana, but he agreed to waive the defect for the purposes of the plea. The court accepted appellant's plea and imposed sentence pursuant to the stipulation of the parties. Because the totality of the circumstances indicate that appellant understood the nature and consequences of the plea, we conclude the district court did not abuse its discretion by denying this claim.

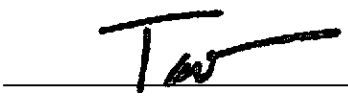
Appellant also appears to assert that his counsel was ineffective and coerced him into entering the plea by telling him that, if he wished to proceed to trial, the trial date could be after the term offered in the plea bargain expired and by informing him that if he proceeded to trial and was convicted he faced a term of imprisonment. Counsel's candid advice about the potential timing of a trial and potential penalty he faced if convicted was not deficient. Further, appellant acknowledged during the plea canvass and in the written plea agreement that he was not forced into entering a guilty plea and his plea was not the product of coercion. Therefore, we conclude the district court did not err by denying this claim. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test for evaluating claim of ineffective assistance of counsel); *Kirksey*

*v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (adopting *Strickland*).

Having concluded that appellant's claims lack merit, we ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Vance Evans McGee
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk