

IN THE SUPREME COURT OF THE STATE OF NEVADA

OTIS HALEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36142

FILED

OCT 03 2000

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 a guilty plea, of driving and/or being in actual physical control of a vehicle while under the influence of a controlled substance and/or with a prohibited substance in the blood or urine in violation of NRS 484.3795. The district court sentenced appellant to serve 54 to 180 months in prison and pay a \$2,000.00 fine and \$9,983.00 in restitution.

Appellant contends his guilty plea was not knowingly and voluntarily entered because the record fails to adequately show that he understood the nature of the charged offense or that he adopted or made sufficient factual admissions. We conclude that appellant is not entitled to relief on this claim.

As a general rule, this court does not "permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction." *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Such a challenge must be raised in the district court in the first instance by bringing a motion to withdraw the guilty plea or by commencing a post-conviction proceeding under NRS chapter 34. See id.

00-17452

In this case, appellant filed a presentence motion to withdraw the guilty plea. See NRS 176.165. An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings. See NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984). Thus, to the extent that appellant challenged the validity of his guilty plea in the presentence motion to withdraw, those claims may be reviewed in this appeal.

The district court may grant a presentence motion to withdraw a guilty plea at its discretion for any substantial reason and if it is fair and just. See State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). On a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not entered knowingly and intelligently. See Bryant, 102 Nev. at 272, 721 P.2d at 368. "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, 102 Nev. at 272, 721 P.2d at 368).

The presentence motion to withdraw filed by appellant stated: "The Defendant's reasons for wanting to withdraw his plea are currently privileged. To some extent, the Defendant may be challenging the adequacy of his current legal representation." The motion did not set forth any specific factual allegations to support the withdrawal of appellant's guilty plea. At the hearing on the motion, appellant indicated that he had felt rushed in pleading guilty

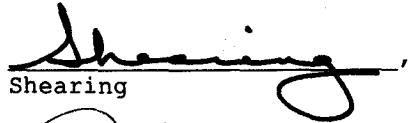
and did not "understand the whole thing." It appears, however, that appellant's primary complaint was that he wanted additional time to discuss the plea with his family. Counsel for appellant explained that she was ready for trial when she received three messages from appellant saying that he wanted a plea deal and did not want to go to trial. Counsel discussed possible negotiations with appellant, met with the prosecutor and obtained a plea offer. Appellant accepted the offer and the district court canvassed appellant regarding his age and education, understanding of the agreement, and the facts of the charged offense. The district court denied appellant's motion to withdraw, concluding that he had not demonstrated that the plea was not knowingly and voluntarily entered.

The record before this court indicates that the district court did not abuse its discretion in denying the presentence motion to withdraw the guilty plea. The motion did not contain any specific factual allegations that would entitle appellant to relief. Cf. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Appellant also did not make any specific allegations at the hearing on the motion that would warrant withdrawal of the guilty plea. Under these circumstances, we conclude that the district court did not abuse its discretion in denying the motion.

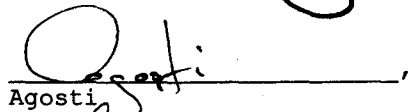
Finally, the particular challenges to the guilty plea that are raised in this appeal were not raised below or considered by the district court. We therefore conclude that they cannot be raised in the first instance on direct appeal. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991); Bryant, 102 Nev. at 272, 721 P.2d at 368.

Having considered appellant's contentions and concluded that they lack merit or are not appropriate for review on direct appeal, we affirm the judgment of conviction.

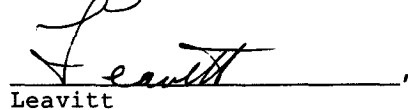
It is so ORDERED.¹



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General
Clark County District Attorney
Michael V. Cristalli
Clark County Clerk

¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.