IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONNY DESHAWN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67252

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to an *Alford*[1] plea of lewdness with a minor under the age of 14. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Donny Smith argues the district court erred by denying his presentence motion to withdraw his plea because it was not knowingly and voluntarily entered due to ineffective assistance of counsel for failing to investigate and rushing him into pleading guilty, and because he was in "shock" when he entered his plea.

A defendant may move to withdraw a plea before sentencing, NRS 176.165, and the district court may, in its discretion, grant such a motion "for any substantial, fair, and just reason." *Crawford v. State*, 117 Nev. 718, 721, 30 P.3d 1123, 1125 (2001). "On appeal from a district court's denial of a motion to withdraw a guilty plea, [we] 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

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

of discretion." *Riker v. State*, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (internal quotation marks omitted).

We conclude the district court did not err in denying Smith's claim that his plea was not knowingly and voluntarily entered. Smith's plea canvass demonstrates he understood what he was pleading to and the consequences of his plea. *Crawford*, 117 Nev. at 722, 30 P.3d at 1126 ("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."). Further, he acknowledged during the plea canvass that he was not coerced into pleading guilty and that he had discussed his case and all possible defenses with counsel.

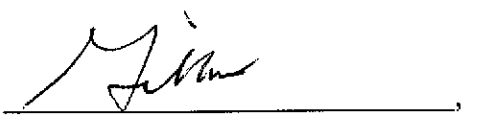
We further conclude the district court did not err in determining ineffective assistance of counsel did not warrant withdrawal of the plea. Given Smith's admissions to the police Smith failed to demonstrate counsel was ineffective for failing to investigate. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985) (a petitioner must demonstrate that counsel's performance was deficient and but for counsel's errors he would not have pleaded guilty and would have insisted on going to trial); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996). Additionally, counsel's statement to Smith that if he did not take the plea deal he would not see the light of day was candid advice about the likely outcome of a trial, and is not evidence of deficient performance.[2] Finally, counsel received a continuance in order to provide Smith more time to consider the plea

[2]We note that Smith was originally charged with sexual assault on a minor under the age of 14 and was facing a sentence of 35 to life if convicted.

negotiations, therefore his claim that his plea was rushed is not supported by the record.

We conclude the district court did not abuse its discretion in denying the motion, and we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk