

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EARLE NELSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 32618

FILED

SEP 10 2002

ORDER OF AFFIRMANCE

ANETTE W. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of burglary, possession of a forged instrument, and theft. The district court sentenced appellant William Nelson to concurrent prison terms of forty-eight to one hundred twenty months for burglary, nineteen to forty-eight months for possession of a forged instrument, and twenty-four to sixty months for theft. Nelson contends that the district court improperly coerced his guilty plea and that he did not knowingly and voluntarily enter his guilty plea. Nelson also contends that the district court improperly denied his right to a prompt sentencing hearing. We disagree and affirm the judgment of conviction.

During the calendar call on February 10, 1998, Nelson rejected the State's plea offer. At that time, Judge Sobel, referencing his twenty-two years' experience as a defense attorney and eight years' experience as a judge, expressed his disbelief regarding Nelson's decision to reject the State's plea offer. Despite Judge Sobel's comments, however, Nelson elected to proceed to trial. It was not until eight days later, during the second day of trial, that Nelson changed his mind and accepted the State's plea offer. But then on March 4, Nelson filed a motion to withdraw

his guilty plea. Judge Sobel denied the motion on March 27, the petitioner was sentenced, and a judgment of conviction was entered on August 10.

In Standley v. Warden, this court allowed the defendant to withdraw his guilty plea but cautioned against an expansive interpretation of its decision.<sup>1</sup> We concluded that “[t]he constitution does not forbid all participation by the judge in the plea negotiation process.”<sup>2</sup> “Only where the judge’s conduct is improperly coercive will we consider affording a defendant an opportunity to withdraw [his guilty plea].”<sup>3</sup> Unlike Standley, where the defendant followed the judge’s advice and immediately following the hearing pleaded guilty, in the instant case, Nelson did not follow Judge Sobel’s advice; he waited until eight days later, after the trial started, to change his mind. Accordingly, there was no coercion in Nelson’s case.

On a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not entered knowingly and voluntarily.<sup>4</sup> This court will not reverse the district court’s determination “absent a clear showing of an abuse of discretion.”<sup>5</sup> Nelson raises three arguments that the district court abused its discretion. He argues that the district court deprived him of his Sixth Amendment right to subpoena

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<sup>1</sup>115 Nev. 333, 337-38, 990 P.2d 783, 785 (1999).

<sup>2</sup>Id. at 337, 990 P.2d at 785.

<sup>3</sup>Id. at 338, 990 P.2d at 785.

<sup>4</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

<sup>5</sup>Id.

witnesses on his own behalf. Nelson also argues that he did not understand that by entering a guilty plea he was giving up his right to appellate review of numerous issues that he raised in the district court prior to entering his guilty plea. Finally, he argues that the district court abused its discretion by failing to conduct an evidentiary hearing on his motion to withdraw his guilty plea.

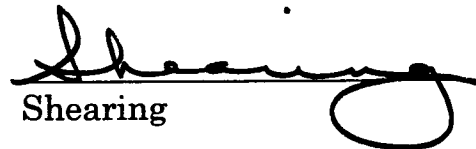
Each of Nelson's arguments lacks merit. The record shows that the district court instructed Nelson's stand-by counsel and the State to assist Nelson in subpoenaing any witnesses he needed and indicated that the district court would provide an investigator to serve subpoenas. The record also shows that the district court canvassed Nelson about whether he understood that by pleading guilty he forfeited certain constitutional rights and Nelson indicated that he did. Nelson's arguments are belied by the record. The district court did not abuse its discretion by failing to conduct an evidentiary hearing on Nelson's motion to withdraw his guilty plea.

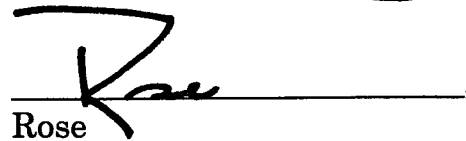
Under NRS 176.015(1), "[s]entence must be imposed without unreasonable delay." At the first sentencing hearing, the State indicated that it believed Nelson may have had a past criminal record under other aliases. At that time, Nelson had the opportunity to cooperate with the Department of Parole and Probation, the State, and the district court by informing them of any past criminal record he may have had under other aliases, but he refused. The district court, sua sponte, continued Nelson's sentencing hearing for two months to allow for an investigation into Nelson's possible past criminal record. The district court explained to Nelson that information about any past criminal record would affect its

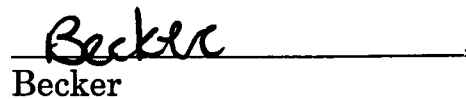
sentencing decision, possibly in his favor, if his past criminal record was clean. Accordingly, the delay was reasonable.

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

ORDER the judgment of conviction AFFIRMED.

  
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Shearing J.

  
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Rose J.

  
\_\_\_\_\_  
Becker J.

cc: Hon. Jeffrey D. Sobel, District Judge  
JoNell Thomas  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk