

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MAURICE FULTZ,

No. 36332

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

NOV 16 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-conviction motion to withdraw a guilty plea.

On April 22, 1996, the district court convicted appellant Michael Maurice Fultz, pursuant to a guilty plea, of one count of first-degree kidnapping with the use of a deadly weapon and four counts of robbery with the use of a deadly weapon. The district court sentenced Fultz to serve eight consecutive terms of fifteen years in prison for the robbery charges and two consecutive terms of seventy-five years in prison for the kidnapping charge. The district court further ordered that all of the sentences be served consecutively. Fultz filed an untimely notice of appeal, which this court dismissed for lack of jurisdiction.<sup>1</sup>

On December 14, 1999, Fultz filed in the district court a proper person post-conviction motion to withdraw his guilty plea. The State opposed the motion. The district court conducted two hearings on the motion, allowing Fultz to present argument and evidence in support of

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<sup>1</sup>Fultz v. State, Docket No. 29608 (Order Dismissing Appeal, December 31, 1996).

the motion and receiving testimony from Fultz's trial counsel. On May 23, 2000, the district court denied the motion. This appeal followed.

In his motion, Fultz claimed that his guilty plea was invalid because he did not fully understand the possible sentence and because trial counsel advised him that he would receive a sentence of five to fifteen years for the kidnapping charge. Based on our review of the guilty plea memorandum and trial counsel's testimony, we conclude that Fultz understood the possible sentence, and that the district court's failure to specifically address the possible sentence during the plea canvass does not render the guilty plea involuntary or unknowing. Moreover, we conclude that Fultz's subjective expectation of a particular sentence does not affect the validity of the guilty plea for two reasons. First, trial counsel testified that he never suggested that Fultz would receive a particular sentence, and the district court apparently found that testimony to be credible. Second, even assuming that Fultz subjectively relied on the advice of counsel regarding a potential sentence, that subjective belief, "unsupported by any promise from the State or indication by the court," is not sufficient to render his guilty plea involuntary or unknowing.<sup>2</sup> Accordingly, we conclude that the district court did not abuse its discretion in concluding that these claims did not rise to the level of a manifest injustice warranting withdrawal of Fultz's guilty plea.<sup>3</sup>

Fultz also alleged that the plea agreement provided for a particular sentence for the kidnapping charge and that the district court's failure to impose that sentence warranted withdrawal of his guilty plea.

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<sup>2</sup>Rouse v. State, 91 Nev. 677, 679 541 P.2d 643, 644 (1975).

<sup>3</sup>See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (stating that district court's determination regarding validity of guilty plea will not be overturned on appeal "absent a clear showing of an abuse of discretion"); NRS 176.165 (providing that a post-conviction motion to withdraw a guilty plea may be granted to correct "manifest injustice").

We conclude that this contention lacks merit for two reasons. First, the guilty plea did not provide for a particular sentence, it simply set forth the potential sentencing range. Second, the guilty plea in this case was not conditioned on the district court imposing a particular sentence, and the plea agreement specifically advised Fultz that the matter of sentencing was entirely within the district court's discretion. For these reasons, we conclude that the district court did not err in rejecting this claim.<sup>4</sup>

Fultz next alleged that his guilty plea was invalid because the district court failed to inquire during the plea canvass as to whether Fultz had had an opportunity to discuss potential defenses with counsel. While it is true that the district court did not ask this question during the plea canvass, we conclude that that failure does not render the guilty plea invalid. The plea agreement signed by Fultz affirmatively states that he had discussed any possible defenses and defense strategies with his counsel. Moreover, his motion does not specify any possible defenses that counsel failed to discuss with him or that would have altered his decision to plead guilty and avoid the possibility of being convicted of the seventy-one counts alleged in the indictment.

Finally, Fultz alleged that his guilty plea was invalid because he was not competent to plead guilty. In particular, he claimed that he was taking psychotropic medications at the time of the plea, which

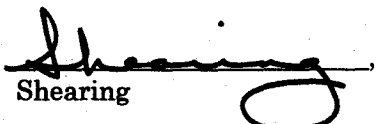
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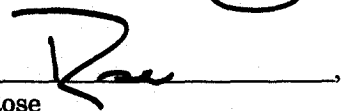
<sup>4</sup>To the extent that Fultz argued that he received a sentence for the kidnapping charge that does not allow for parole eligibility after five years, we conclude that he is mistaken. The applicable version of NRS 200.320(2) provided that regardless of whether the district court imposed a life sentence or a definite term of years, parole eligibility would commence after five years. See 1973 Nev. Stat., ch. 798, § 6, at 1805. We have held that a defendant sentenced to a definite term of years under that provision is eligible for parole after serving five years of the definite term, and that the requirement in NRS 213.120 that a defendant serve one-third of a definite term before being eligible for parole does not apply. Greene v. State, 110 Nev. 1336, 885 P.2d 609 (1994).

affected his capacity to enter the plea. The district court found that the type of medications Fultz was taking would enhance his competency, not render him incompetent or adversely affect his ability to understand the proceedings. Moreover, Fultz indicated during the plea canvass that the medications had not adversely influenced him. Under the circumstances, we conclude that Fultz failed to demonstrate that he was not competent to enter the guilty plea.<sup>5</sup>

Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
Shearing J.

  
Rose J.

  
Becker J.

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<sup>5</sup>See Godinez v. Moran, 509 U.S. 389, 396 (1993) (explaining that a defendant is competent to enter a plea if he has present ability to consult with attorney "with a reasonable degree of rational understanding" and "a rational as well as a factual understanding of the proceedings against him" (quoting Dusky v. United States, 362 U.S. 402, 402 (1960))).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Michael Maurice Fultz  
Clark County Clerk