

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY COOPER,

No. 37350

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 14 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's motion to withdraw a guilty plea.

On November 18, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a firearm by an ex-felon in violation of NRS 202.360. The district court sentenced appellant to serve a maximum term of seventy-two months with a minimum parole eligibility of twelve months in the Nevada State Prison. Appellant did not file a direct appeal.

On November 15, 2000, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On December 20, 2000, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that several of his rights guaranteed by the federal and Nevada constitutions were violated. Specifically, he argued that the district court denied him his right to a trial by jury, his attorney violated his right to call and have witnesses subpoenaed on his behalf, and police officers denied him due process of law by falsifying documents and planting evidence. Appellant waived these rights by pleading guilty to his offense.¹ Further, appellant does not and cannot argue that he was unaware of the general waiver of constitutional rights by entry of guilty plea. The written plea agreement thoroughly informed appellant that he was waiving these rights by entry of his plea. In addition, during the plea canvass, appellant acknowledged reading,

¹Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

understanding, and signing the agreement and specifically acknowledged that he reviewed the waiver of rights listed in the agreement.

Appellant next argued that his plea was not knowingly and voluntarily entered. After a sentence is imposed, the district court may only withdraw a plea and set aside a sentence to correct manifest injustice.² A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not knowingly and intelligently entered.³ This court will not disturb a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁴ Our review of the record on appeal reveals that the district court properly denied appellant's motion.

Appellant first contended that his attorney coerced him to enter a plea of not guilty. This contention is belied by the record. In his signed plea agreement, appellant acknowledged that he was not "acting under duress or coercion." Further, when asked by district court if anyone forced him to plead guilty, appellant indicated that no one had. There is no abuse of discretion on this ground.

Appellant also contended that he pleaded guilty under the belief that he would receive probation if he participated in the drug court program. This contention is also belied by the record. Appellant informed the district court that no promises had been made to him in exchange for his plea and he acknowledged the same in his signed plea agreement. Appellant affirmatively acknowledged that the sentence range for his offense is one to six years in the Nevada State Prison. While the plea agreement stated that appellant was eligible for probation, it also stated that the district court had discretion to impose a sentence within the applicable statutory range. Thus, the district court did not abuse its discretion on this basis.

Appellant next contended that the district court made a biased and derogatory statement against him after accepting his plea but before sentencing and that he is factually innocent. The motion to withdraw a guilty plea is limited in scope; only claims related to the validity of the

²NRS 176.165.

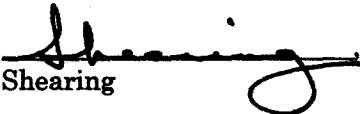
³Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

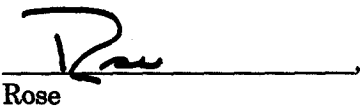
⁴Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

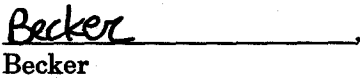
plea are pertinent.⁵ These claims are outside the scope of this motion because they do not pertain to the issue of whether his plea was knowingly and voluntarily entered. Accordingly, we decline to reach them.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Barry Cooper
Clark County Clerk

⁵Hart v. State, 116 Nev. 558, 564, 1 P.3d 969, 973 (2000). See also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).