

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE MOTTI, JR.,

No. 37577

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 23 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On September 29, 1999, appellant Lawrence Motti, Jr., was convicted, pursuant to a nolo contendere plea,¹ of child abuse and neglect causing substantial bodily harm and of voluntary manslaughter. The district court sentenced Motti to serve a prison term of 48 to 193 months for the child abuse count and a consecutive prison term of 22 to 96 months for the manslaughter count. Motti did not file a direct appeal.

On November 8, 2000, Motti filed a proper person petition for a writ of habeas corpus, alleging that his guilty plea was not knowing and voluntary and that his counsel was ineffective. Without conducting an

¹Motti pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

evidentiary hearing, the district court denied Motti's petition. Motti filed the instant appeal.

Motti contends that the district court erred in denying his petition because his plea was not knowing and voluntary.² Specifically, Motti contends that his plea was unknowing because he was not advised by his counsel or the district court that he would have to appear before a psychiatric panel before he could be paroled from prison. Further, Motti claims his plea was unknowing because he was never advised that he was pleading guilty to violent crimes, and consequently would be denied the opportunity to be housed at a conservation camp and earn additional credits toward his sentence. We conclude that Motti's contention lacks merit.

On appeal from a district court's determination of the validity of a plea, this court presumes that the lower court correctly assessed the validity of the plea and will not reverse absent a clear showing of abuse of discretion.³ To demonstrate a constitutionally valid nolo contendere plea, the record must show that the plea was knowingly and voluntarily entered with real notice of the nature of the charges and direct consequences of the plea.⁴ Further, in accepting a nolo contendere plea, a district court "must

²Motti also argues that the district court erred in denying his motion for production of documents, namely, the transcripts of the plea canvass and sentencing hearings. We need not address this issue because it is moot. Motti now has the transcripts at issue and has included them in his appendix and utilized them in this appeal. Additionally, we note that Motti does not challenge whether his counsel was ineffective at the plea canvass or at sentencing.

³Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁴NRS 174.035; Gomes, 112 Nev. at 1480, 930 P.2d at 706.

determine that there is a factual basis for the plea, and . . . must further inquire into and seek to resolve the conflict between the waiver of trial and the claim of innocence.”⁵ This court will review the entire record and look to the totality of circumstances of the case, not just the technical sufficiency of the plea canvass, to determine whether such a plea was validly entered.⁶

In the instant case, the district court found that Motti’s nolo contendere plea was knowing and voluntary. The district court did not abuse its discretion in so finding because the record reveals that the plea was validly entered. In particular, at the plea canvass, the district court advised Motti of the constitutional rights that he was waiving and the minimum and maximum sentence for each count. Further, Motti represented to the court that: (1) he was pleading nolo contendere to avoid the harsher penalties arising from the original charge of murder; (2) he had read the plea bargain memorandum and amended information; (3) he was pleading guilty knowingly and voluntarily, and not due to any threat; and (4) he had discussed the elements of the charged crimes with his counsel. Finally, the plea agreement signed by Motti advised him of the direct consequences arising from his nolo contendere plea, including that he would be ineligible for probation until he was certified by a psychiatric panel.

Although Motti notes that he was not advised about special conditions of parole eligibility, this court has repeatedly recognized that noneligibility for parole is not a consequence of a guilty plea, and therefore

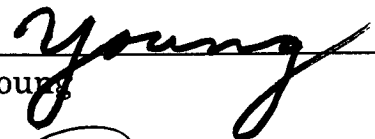
⁵Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982) (citing Alford, 400 U. S. at 38 n.10).

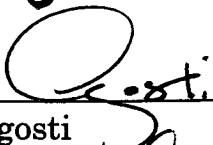
⁶See Gomes, 112 Nev. at 1481, 930 P.2d at 706.


the failure to advise about special conditions of parole will not vitiate an otherwise valid plea.⁷ Likewise, the fact that Motti would not be eligible for certain good time credits because he pleaded guilty to a violent crime is a collateral consequence that does not affect the validity of his plea.⁸

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael A. Cherry, District Judge
Attorney General/Carson City
Clark County District Attorney
David M. Schieck
Clark County Clerk

⁷See Little v. Warden, 117 Nev. ____, ____ & n.9, 34 P.3d 540, 543 & n.9 (2001); Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970); Mathis v. Warden, 86 Nev. 439, 471 P.2d 233 (1970).

⁸See Little, 117 Nev. at ____, 34 P.3d at 543.