

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUY DOUGLAS DAILEY,

No. 37888

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 30 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive prison terms of 40 to 180 months.

Appellant's sole contention is that the district court erred in denying his presentence motion to withdraw his guilty plea because his guilty plea was not knowing or voluntary. Specifically, appellant contends that his plea was not knowing or voluntary because he was "coerced" by counsel to plead guilty and because he pleaded guilty based on his belief that he was eligible for probation. We conclude that appellant's contention lacks merit.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea prior to sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.¹ On a motion to withdraw a guilty plea, the defendant has the burden of showing that his guilty plea was not knowing or voluntary, and

¹State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

was therefore invalid.² In determining whether a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of the case.³ We have held that the district court should allow a defendant to withdraw his guilty plea in circumstances where, prior to sentencing, the defendant provides the court with a credible claim of actual innocence or shows that he entered his plea without knowledge of its consequences.⁴

In the instant case, the district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea. First, appellant has failed to make a credible claim of innocence. In fact, appellant admitted to committing the robbery to which he pleaded guilty, stating that he "robbed a Winners corner on Stead Boulevard" and that he displayed a weapon during the robbery.

Second, appellant has failed to show that his plea was either involuntary or made without knowledge of the consequences of his guilty plea. The record reveals no evidence that counsel coerced appellant to plead guilty or that he was otherwise under some form of duress when he entered his guilty plea. In fact, at the plea canvass, the district court inquired whether appellant had been promised or threatened with anything in order to get him to plead guilty. Appellant responded "No, sir," and stated that he was pleading guilty because he committed the charged offense.

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

³Id. at 271, 721 P.2d at 367; see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).


⁴See Mitchell, 109 Nev. at 140-41, 848 P.2d at 1061-62; Bryant, 102 Nev. at 271-72, 721 P.2d at 367-68.

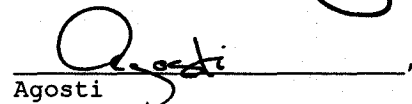
Moreover, appellant has failed to show that he was unaware that he was ineligible for probation at the time he entered his guilty plea. Although appellant stated, at his plea canvass, that he did not know he was not eligible for probation, prior to accepting appellant's plea, the district court pointed out the paragraph of the plea agreement that provided that appellant was ineligible for probation. The district court then explained to appellant: "The nature of the crime, does not give me the option of giving you probation at sentencing. So when you come back next month, you will go to prison. Do you understand that?" Appellant responded that he understood that the district court would sentence him to prison and affirmatively represented to the court that he still wanted to enter his guilty plea.

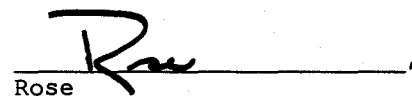
Because the totality of the circumstances reveal no credible claim of appellant's innocence or a showing that appellant entered an unknowing or involuntary guilty plea, the district court did not abuse its discretion in denying appellant's motion to withdraw his guilty plea.

Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Shearing J.


Agosti J.


Rose J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Bruce D. Voorhees
Washoe County Clerk