

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN EDWARD MARX,

No. 38092

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 03 2002

JAIETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Ribard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of lewdness with a child under 14 years. The district court sentenced appellant Jonathan Edward Marx to serve a prison term of life with the possibility of parole after 10 years.

Marx contends that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea. Specifically, Marx contends that the district court abused its discretion in denying his motion because: (1) his counsel coerced him into accepting the plea; (2) Marx would be denied his right to due process if forced to go through with the plea; (3) Marx's counsel failed to investigate whether Marx was intoxicated during his police interview; and (4) there were serious errors in Marx's presentence investigation report.

NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason and if it 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 entered knowingly and intelligently.² To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.³

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

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

³See id.

"On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"⁴ Based on our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying Marx's motion to withdraw his plea.

First, Marx has failed to demonstrate that he entered his guilty plea involuntarily due to coercion from his trial counsel, Tobin E. Fuss. At the plea canvass, Marx indicated that he was pleading guilty because he was guilty, and not because he was promised something or threatened. Further, Marx stated that he was pleading guilty freely and voluntarily, and that he was satisfied with his trial counsel's performance. At the hearing on Marx's motion to withdraw his plea,⁵ Fuss likewise represented to the court that he had not coerced Marx into pleading guilty. We therefore conclude that the district court did not abuse its discretion in finding that Marx's guilty plea was not the product of coercion.

Second, Marx has failed to prove that the district court's denial of his motion to withdraw his plea resulted in a violation of Marx's right to due process. In fact, the totality of the circumstances demonstrate that Marx entered a knowing and voluntary guilty plea. At Marx's plea canvass, the district court advised Marx both of the constitutional rights that he was waiving and the direct consequences arising from his guilty plea. Further, Marx executed and acknowledged reading the guilty plea memorandum, which likewise advised him of the consequences of his guilty plea and the constitutional rights he was waiving. Finally, the record reveals that, in exchange for Marx's plea of guilty, the State dropped two similar counts charged in the original complaint. Because

⁴Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

⁵Marx also argues that the district court erred in failing to conduct a meaningful hearing on his motion to withdraw his guilty plea. We conclude that the hearing conducted by the district court was sufficient. The district court questioned Marx, as well as trial counsel, and considered the totality of the circumstances before concluding Marx's plea was knowing and voluntary, and denying Marx's motion to withdraw his plea.

Marx entered a knowing and voluntary plea, we conclude that his right to due process was not violated.

Third, Marx has failed to show how his counsel's failure to challenge statements Marx made to the police warrants withdrawal of his guilty plea. Specifically, Marx has not demonstrated that the statements made in his police interview were involuntary due to his marijuana and methamphetamine use, or how the alleged illegal police interview improperly influenced his decision to plead guilty.

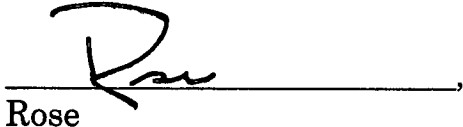
Likewise, Marx has failed to show that the alleged errors in his presentence investigation report rendered his plea unknowing or involuntary. The purported errors in the presentence investigation report were not substantial and included: (1) an incorrect address; (2) one of several references to his age was wrong; and (3) an erroneous statement that Marx did not know the difference between a penis and a vagina. The errors in the report were pointed out to the district court before sentencing, and Marx has failed to show how those errors affected his guilty plea.

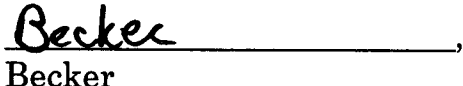
Accordingly, because the record reveals that Marx's guilty plea was knowing and voluntary, we conclude that the district court did not abuse its discretion in denying Marx's motion to withdraw his guilty plea.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk